TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1899.

No. 349. 78.

THE ILLINOIS CENTRAL RAILROAD COMPANY, APPELLANT,

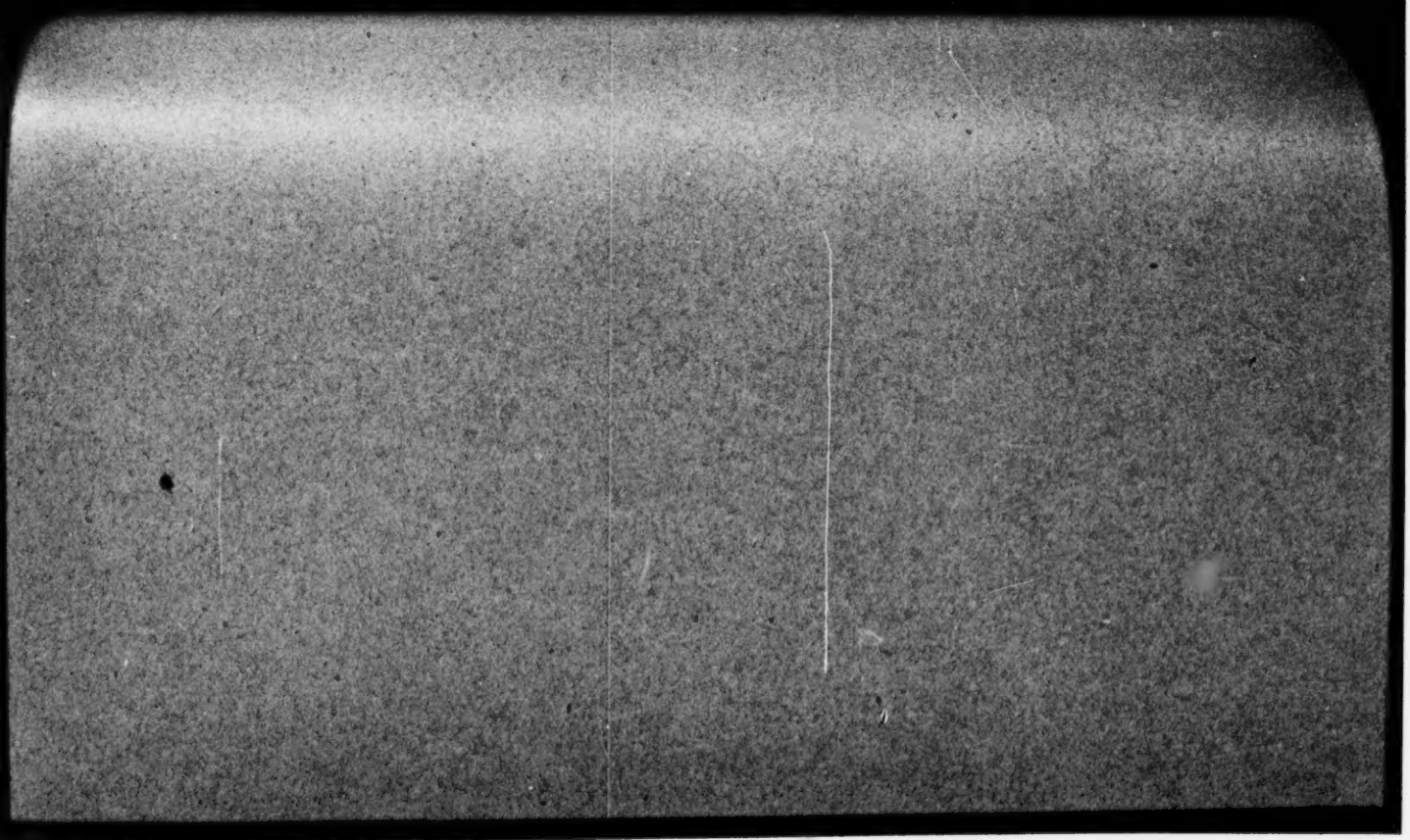
vs.

WIRT ADAMS, STATE REVENUE AGENT, AND THE RAILROAD COMMISSION OF THE STATE OF MISSISSIPPI ET AL.

APPEAL FROM THE CIRCUIT COURT OF THE UNITED STATES FOR THE SOUTHERN DISTRICT OF MISSISSIPPI.

FILED JUNE 2, 1899.

(17,433.)



(17,433.)

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1899.

No. 319.

THE ILLINOIS CENTRAL RAILROAD COMPANY, APPELLANT,

vs.

WIRT ADAMS, STATE REVENUE AGENT, AND THE RAILROAD COMMISSION OF THE STATE OF MISSISSIPPI ET AL.

APPEAL FROM THE CIRCUIT COURT OF THE UNITED STATES FOR THE SOUTHERN DISTRICT OF MISSISSIPPI.

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1 *Caption of Minutes.*

May Term, 1899, First Day of May, 1899.

Be it remembered that a regular term of the United States circuit court for the southern district of Mississippi was begun and held at the court-room thereof, in the city of Jackson, on the first Monday of May, A. D. 1899, being the time and place for holding said court appointed by law.

There were present: Honorable H. C. Niles, judge; A. M. Lea, U. S. attorney; A. C. Melchior, ass't U. S. att'y; F. W. Collins, marshal; L. R. Moseley, clerk.

2 *Original Bill.*

The Bill of Complaint of—

THE ILLINOIS CENTRAL RAILROAD COMPANY, a Corporation and Citizen of the State of Illinois, Complainant,

versus

WIRT ADAMS, Revenue Agent of the State of Mississippi, a Citizen of said State and Resident of said Judicial District, with His Office Therein; and The Railroad Commission of the State of Mississippi, the Office of which is Located in the City of Jackson, in said District; and J. J. Evans, Chairman and Member of said Commission, and M. M. Evans and John D. McInnis, Members of said Commission, Being All of the Members of said Body and All of Whom are Citizens of said State and Residents in said Southern District; and against Thomas C. Kimbrough, Clerk of said Commission, a Citizen of said State, Whose Office and Person are in said District; and against The Yazoo and Mississippi Valley Railroad Company, a Corporation of the said State Alone, Whose Principal Place of Business is in said District, Defendants.

To the honorable the judges of the circuit court of the United States presiding in and for the southern district of the State of Mississippi, at Jackson:

I.

Your orator, The Illinois Central Railroad Company, complainant aforesaid, complains and shows that it is a corporation duly organized and existing under the laws of the State of Illinois alone, and that it is domiciled, and has its chief office in the said State of Illinois, and its citizenship there, and has no corporate existence, residence or citizenship under the laws, nor in the State of Mississippi,
3 that it is a tax-payer of the State and district aforesaid, and of the county of Hinds, and of the city of Jackson therein.

Your orator further complains and shows that all of the defendants above named are citizens and residents of the State of Missis-

sippi, and of this judicial district, to wit: The defendant, The Mississippi Railroad Commission organized under the laws of the State of Mississippi, and has its office in fact and as fixed by law in Jackson, Hinds county, Mississippi, and is composed alone of the defendants, J. J. Evans, chairman, a resident and citizen in Hinds county, in said State and district, and the two defendants, M. M. Evans and John D. McInnis, both of whom are citizens of said State and of this judicial district and circuit; and the defendant, Wirt Adams, revenue agent of the State of Mississippi, and the defendant, Thomas C. Kimbrough, clerk of said commission, is also each a citizen of said State, and the former is a resident of, and the latter is personally in, said district and circuit, and each of them has his official office as such revenue agent and as such clerk, respectively, at Jackson aforesaid; and the said Yazoo and Mississippi Valley Railroad Company is a corporation of the State of Mississippi alone, and has its principal place of business and its domicile in said district.

III.

Your orator further complains and shows that the State of Mississippi was by appropriate proceedings to that end admitted into the Union as one of the States thereof in the year 1817, with its geographical limits as at present constituted. But at the time of its admission, its entire area consisted of unceded territory, except the extreme southern portion thereof, including, roughly stated, the counties of Warren and Claiborne and that territory lying south of the northern boundary lines of Jefferson, Lawrence, Covington, Jones and Wayne counties. That by the treaty of Doak's Stand, ratified January 8, 1821, the territory within the limits of said State opened by surrender of the Indian occupants thereof to white occupants, was extended northward so far as to embrace, roughly speaking, the counties of Washington, Holmes, Madison, Rankin, Smith, Jasper and Clarke, and all others lying to the south of them. Thus, until the year 1831, it remained the case that fully the entire northern half of said State remained subject to the occupancy and temporary dominion of the Indian tribes. By the treaty of Dancing Rabbit creek, which was ratified February 24, 1831, the Choctaw tribe of Indians surrendered their remaining territory in said State, which act of surrender expanded the area accessible to white
4 occupancy unto the diagonal line which is seen by reference to any standard map of the State of Mississippi, extending from Helena, Arkansas, to the northwestern corner of Oktibbeha county, and thence easterly to the Alabama line. And by the treaty of Pontotoc, ratified March 1, 1833, the remaining portion of said State, commonly known to this day as the Chickasaw cession, was surrendered to the whites by the Chickasaw tribe of Indians.

Thus it was, that in the years of 1820, 1831 and 1833 respectively, there were three distinct advancements of the ceded area whereby the domain of the State was thrown open to white settlement and possession; and it was not until the year 1835, that as a matter of fact the whole domain of the State was practically opened for that purpose.

IV.

Your orator further complains and shows that the class of people by which the original Mississippi territory was settled, such settlements being located along the Mississippi river in what is now Wilkinson, Adams and Warren counties, was one of comparative wealth and a high order of intelligence, with an amount of culture and views of public policy in advance of the ordinary class of pioneer population. From this fact it resulted that from the organization of this State are found frequent traces in its history of efforts to advance the two great causes of public education and also the work of internal development and improvement.

So early as the year 1829, an act was passed by the legislature of said State providing for the organization of a board of internal improvements, whereby the navigation of its rivers might be improved and also canals and roads be constructed; and so early as the year 1831, the legislature of this State did incorporate two companies known as the West Feliciana railroad and the Vicksburg and Clinton railroad, both of which railroads were in fact soon thereafter constructed, being amongst the earliest constructed in the United States.

The withdrawal of the Indian tribes from the territory in the State of Mississippi, as stated above, opened a vast and fertile territory to the people of this State, and the newly invented and applied art of railroad construction offered the immediate means for taking possession of and developing the same. It needs but a slight investigation of the legislative history of that period in order to see how the two facts acted and reacted each upon the other. Immediately that the possibilities of the expansion and development of the State's territory arising therefrom dawned upon the legislative mind, there was conceived and put into execution as a settled policy for internal improvement of this State, the invitation to private individuals to invest largely of their means in the construction and the operation of railroads, and such invitation consisted of the granting of charters containing attractive and valuable privileges and franchises. One of the earliest contrivances of the legislature for this purpose (and one that was persisted in for many years thereafter), was the granting in such charters of exemptions from taxation for a period of time more or less restricted.

For examples of this fact, it will be found that on the 5th day of February, 1836, when the Choctaw territory of said State had been actually opened for occupancy not more than two years, and the Chickasaw cession not one year, was granted a charter to the Jackson & Brandon Railroad and Bridge Company, section 18 of which conceded an exemption of all of the shares, and the real and personal estate appertaining to the said company for a period of five years from the completion of the railroad and bridge therein contemplated. So, also, by an act of the same legislature of 1836, approved February 27th, was incorporated the Aberdeen & Pontotoc Railroad & Banking Company, the route of such proposed railroad lying in the Chickasaw cession, whereby its capital stock was exempt

from taxation for one year after the said company should go into operation, and after that time, the taxes that might be imposed upon it were restricted forever to the sum of twenty-five cents per share of one hundred dollars. Also, by the act approved February 26th, the same year, was incorporated the Mississippi Railroad Company, by section 26 whereof all of its stock and property was exempt from taxation for the term of five years from the completion of said road, and it was further provided that the said company should not be taxed beyond the rate of taxes imposed upon real estate in the State, estimated upon the original cost for the execution and completion of the proposed works. There were other similar statutes enacted during the same year.

So also by the act of April 28, 1837, was incorporated the Northern Bank of Mississippi, which was required to build a railroad from Holly Springs to the Mississippi river, and section 6 of its charter exempted its stock from taxation for one year after such bank should go into operation, and after that it limited the taxes upon the same to twenty-five cents per share of one hundred dollars. By the act of May 11, 1837, was incorporated the Pontotoc, Oxford & Delta railroad, section 7 of its charter exempting its stock for six years, and after that imposing the same limit of twenty five cents per share of one hundred dollars.

The policy thus inaugurated and adopted as the settled policy from the inception of the railroad industry, in this State, was continuously preserved in, as stated above, for many years thereafter.

The Mobile & Ohio Railroad Company was chartered by an act approved February 14, 1848, and by section 3 thereof it was granted an exemption from taxation on its property in this State until the net earnings thereof should enable the payment of a dividend of eight per cent. per annum upon the cost of construction within this State, and said charter provision and exemption is in force and effect in this State to this date.

By the act of February 19, 1850, incorporating the New Orleans & Jackson Railroad Company, and by the other act of March 11, 1852, granting the right of way through the State of Mississippi to the New Orleans, Jackson & Great Northern Railroad Company, the said railroad was by this State granted an exemption from taxation for a period of fifteen years, and by the act of February 27, 1854, amendatory of the charter of the Mississippi Central Railroad Company, the said company was granted an exemption from taxation until the said road should be completed.

So also, after the cessation of hostilities of the late civil war, the legislature of the State of Mississippi, so soon as it had opportunity after the process of repairing the disorganization of social and industrial conditions consequent upon that great catastrophe, turned anew its attention to the upbuilding of the internal improvements, and to the further development of the territory of this State; and in so doing, it resumed and continued the policy inaugurated from the beginning, and especially from the year 1836, as stated above, in respect to matters of railroad construction. For example: By the act approved October 22, 1866, amending the charter of the

Grand Gulf & Port Gibson Railroad Company, and section 4 thereof, the capital stock of said company and all other property belonging to or connected with said railroad, was exempted from all taxation until eight years after the said road should be rebuilt and put in running order. The same legislature in the month of February, 1867, granted similar exemptions with circumstantial variances to the New Orleans, Mobile & Chattanooga, to the Grenada & Prentiss Railroad Company, and to the Grenada & Meridian Railroad Company, all of which exemptions will be found set forth in the charters of said companies respectively, in the Session Laws of 1867.

7 Then came the period of reconstruction consequent upon the civil war, during which period there was no further session of any legislature in the State of Mississippi until after the rehabilitation of the State by the adoption of the reconstruction constitution of 1869. In that constitution occurs section 13 of article XII, which is in words and figures as follows:

"SECTION 13. The property of all corporations, for pecuniary profits, shall be subject to taxation, the same as that of individuals."

And also occurred section 20 of the same article, which is in words and figures as follows:

"SECTION 20. Taxation shall be equal and uniform throughout the State. All property shall be taxed in proportion to its value, to be ascertained as directed by law."

The insertion into the new constitution of the two provisions aforesaid created a doubt in the minds of the members of the bar and of the legislature and of the judiciary as to the exact extent of the limitation thereby imposed upon the power of the legislature to grant exemptions from taxation to corporations for pecuniary profits, including railroads, because of which doubt the legislature of 1870 saw fit in the incorporation of such railroads as by it were incorporated, and in the extension of relief and aid to certain railroads already incorporated, to give to that relief and aid so extended a different shape and form from that of a simple exemption from taxation as theretofore had been done.

By an act approved July 20th, 1870, the said legislature incorporated the Mobile & Northwestern Railroad Company, and section 21 of the charter thereof was in words and figures following, to wit:

"SECTION 21. Be it further enacted, That in consideration of the construction of the railroads provided for herein, and of the great benefit which the State will receive in the development of its agricultural resources by means of said railroads as works of internal improvement, and also of the increased value which will thereby be added to the property of the State, thus enabling the State to greatly increase its revenue without additional burdensome taxation upon the people, the State hereby agrees with said company (and which agreement is irrepealable), that all taxes to which said company shall be subject for the period of thirty years, are hereby appropriated and set apart, and shall be applied to the payment of the debts and liabilities which the said company may have incurred in the construction of said road, or for money borrowed by said company upon

lands or otherwise, to be used in constructing said road, or pay-
8 ing debts incurred by said company in constructing the same;
and it shall be the duty of the tax collector in every county in each and every year, to give to said company a receipt in full for the amount of said taxes upon receiving from said company an affidavit made by the president or cashier of said company, that the amount of said taxes have actually and in good faith been paid and applied by said company during the year, in payment of the debts incurred, or money borrowed as aforesaid, and which receipt so given shall be in full of all taxes, county, State, and municipal, to which said company shall be subject: Provided, however, that whenever the profits of said company shall enable it to declare and pay to the stockholders an annual dividend of eight per cent. upon its capital stock over and above the payment of its debts and liabilities, then the appropriation of the taxes aforesaid shall cease, and said taxes shall be paid by said company to the tax collector, to be by him paid over as required by law."

By another act, approved August 8th, 1870, the same legislature amended the charters of the following railroads so as to confer upon each of said companies all the rights, privileges, immunities and franchises granted by the act of incorporation of the Mobile and Northwestern Railroad Company, embraced in the twenty-first section thereof aforesaid, to wit: the Memphis and Vicksburg; the Vicksburg, Yazoo and Grenada; the Canton and Vicksburg; the Natchez and Jackson; the Meridian and Red River; the Ship Island, Mississippi City and Paducah; the Elyton and Aberdeen; the Grenada, Louisville and Meridian; and the Greenville and Rolling Fork—nine separate railroads theretofore chartered. In short, the legislature at its first session under the constitution of 1869 continued the previous policy of the State, modifying the same so as to conform to the constitution, providing a way by which, and for the considerations named, the railroads' charters should grant special and peculiar privileges in respect to the payment of all taxes for many years, said privileges being put in the form of an appropriation, made by the legislature out of its public treasury, equal in amount to what would be the amount of the taxes assessed against each respective company, and authorizing the same to be paid by the said railroad companies, as paymaster of the State, to the creditors of said railroad companies respectively, holding construction debts, the substantial effect thereof being the same as if the taxes had been covered into the treasury of the State and by the State paid in extinguishment of the railroads' construction liabilities.

So, also the legislature of Mississippi, at its successive ses-
9 sions in 1871, 1872, 1873, 1874, 1875, 1876, 1877 and 1878 enacted many other acts similar to the foregoing, and many other acts granting simple exemptions to railroads and other corporations for pecuniary profits, which were duly approved by the chief executive, the governor, and duly published in the session acts of said State, in which the State, for the considerations therein set out, made charter contracts which protected such corporations from

the payment of all taxes for a limited time; and amongst other acts, showing the policy of said State and the practical construction placed by the legislative department of said State upon the constitution of 1869 in this regard, there was approved on April 1, 1872, an act as follows:

"An act to encourage the introduction of machinery and the establishment of factories in the State of Mississippi.

"SECTION 1. Be it enacted by the legislature of the State of Mississippi, That in consideration of the construction of factories and the introduction of machinery for the purpose of erecting, furnishing and carrying on factories in this State, for the manufacture of cotton and woolen goods, or yarns, or fabrics composed of those or any other materials, and for the making of all kinds of machinery and implements of husbandry necessary for the cultivation of the soil, and to manufacture all other articles or things or whatsoever character or description not inconsistent with the laws and constitution of this State or of the United States, and of the great benefit which the State will receive in the development of its manufacturing resources by means of said factories, and the large and increased amounts of machinery and capital, that will, by this liberal-spirited policy, be invited to the State, thus giving employment to and supplying the wants of the thousands of our people, and also the increased value which will thereby be added to the property of the State, thus enabling the State to greatly increase its revenue without additional and burdensome taxation on the people, the State hereby agrees with any and all manufacturing companies in this State, whose capital stock shall not be less than ten thousand dollars paid in, not in operation before the passage of the act, that all taxes to which the said company or companies shall be subject for the period of ten years are hereby appropriated and set apart, and shall be applied to the payment of the debts and liabilities which any of said companies may have incurred in the construction of factories, or the purchase of machinery, or paying debts incurred by any of said companies in constructing or purchasing the same; and it shall be the duty of the tax collectors in every county, in each and every year, for the period of ten years, to give to each of said companies a receipt in full for the amount of all said taxes due, upon receiving from each of said companies an affidavit, made by the president or treasurer of each of said companies, that the amount of said taxes have actually, and in good faith, been paid and applied by each of said companies during the year in payment of debts incurred, or money borrowed, as aforesaid; and which receipt, so given, shall be in full of all taxes, county, State or municipal, to which said companies shall be subject; provided, that whatever the profits of any of said companies shall enable it to declare and pay to its stockholders an annual dividend of four per cent. upon its capital stock, over and above the payment of its debts and liabilities, then the appropriation of the taxes aforesaid shall cease towards such company or companies declaring said dividends, and said taxes shall be paid by such companies declaring such

dividends to the tax collector, to be paid by him over as required by law; provided further, that nothing in this act contained shall be so construed as to exempt the property of any manufacturing or mechanical company from any tax levied by any county, city or town to meet the principal or interest on bonds issued by such county, city or town to aid in the construction of railroads; and the taxes thus levied and collected shall be applied to the payment of such bonds and interest thereon.

"SECT. 2. Be it further enacted, That this act shall take effect and be in force from and after its passage." See Session Acts of 1872, page 65.

And on the 17th day of April, 1873, and also in 1877, said State passed acts, amending the act approved April 1, 1872, aforesaid, and in the amendatory act of 1877, provided that said act of 1872, should "be so amended as not to exempt from taxation, State, county or municipal, any property of any manufactory or manufacturing company, other than that paid in capital stock of said companies, their machinery for manufacturing purposes, their manufactured goods and the buildings in which their machinery is located, and the grounds upon which their buildings are situated, or which may be within the necessary inclosure around such buildings," and so forth.

After the passage of said last named amendatory act, the Mississippi mills, a manufacturing corporation to which the privilege of the foregoing act had been extended by an amendment of its charter, filed its bill in the courts of said State, claiming that the last amendatory act aforesaid, and the things about to be done under it, impaired the obligation of its charter contract, and prayed
11 that the tax collector and his successors be enjoined from collecting the taxes and commissions allowed by the aforesaid amendatory act of 1877, and that they be compelled to execute the aforesaid acts of 1871 and 1873.

The supreme court of said State, after full argument by the most learned counsel, construed the words of the constitution of 1869, as to taxation and exemption therefrom, and declared in written opinions therein delivered, the meaning of the words of the constitution of 1869, and thus made certain and fixed the rule and interpretation of said constitution, to wit: that the words of section 13, article XII of said constitution aforesaid, did not require any legislature to tax the property of corporations for pecuniary profits, and that the words "shall be subject to," did not mean subjected to; or, in other words, that said "provision is mandatory, not that the property of the corporation shall be taxed (that is left to the legislature), but such property shall ever be subject to, *i. e.*, liable—to be taxed, if the legislature so will;" and this express adjudication of the highest court of said State your orator shows has been followed and reaffirmed in many cases since its delivery in April, 1878, by many other rulings, opinions and decrees of the supreme court of said State, and has for twenty years been the settled law and rule of property of the said State, and has been adopted and acted upon by the legislature, the executive and the judicial departments of said

State, and by the agents and officers of the said State, and the counties and municipalities therein, and under said settled law and rule of property, and upon the faith thereof, enormous sums of money have been invested in said State, which otherwise would not have been so invested, and particularly the investments made by your orator, as hereinafter mentioned, and that many contracts, such as charter contracts with the State and other contracts between individuals or corporations, have been executed and acted upon, and the status of the parties changed so that they cannot now be restored, upon the faith of such settled law and rule of property, among which are certain contracts hereinafter mentioned.

V.

Your orator further complains and shows that in each of the revised codes of the State of Mississippi, as well as in the session acts of every legislature, many kinds of property were exempted from taxation, for varying periods, and, among others, the following:

"All permanent factories hereinafter established in this State before the first of January, 1900, for working cotton, jute, ramie, wool, silk, furs, metal and all other manufacturing imple-
12 ments or articles for use in a finished state, shall be exempt from taxation for a period of ten years." Code 1892, sec. 3744.

Also, exemptions of all railroads from taxation "where the same are in process of construction," and so forth. Acts 1884, chap. 22, and Acts 1890, chap. 2.

And in the acts requiring railroad companies to file schedules of their property with the railroad commissioners, who were authorized to assess the same for taxation, where the law provided for it, it was expressly provided that, "if any of said property is claimed to be exempt from taxation, it shall be separately stated and the law cited under which the exemption is made," and said commission was to assess for taxation such property owned as was liable for taxation under the then existing laws; indeed, in the constitution of the State of Mississippi adopted in 1890, which is still in force, among the many drastic and stringent new regulations of railroad corporations, it is expressly provided, by section 181 thereof, that "exemptions from taxation to which corporations are legally entitled at the adoption of this constitution, shall remain in full force and effect for the time of such exemptions, as expressed in their respective charters, or by the general laws, unless sooner repealed by the legislature."

VI.

Your orator shows that under the settled law, so constructed and acted upon, as aforesaid, the successive legislatures always, including those of 1886, 1888, 1890, 1894 and 1896, as your orator is informed, refused to repeal exemptions granted as aforesaid, in charters; and at the last session of the legislature of said State, held during

the present year of 1898, although the governor in his message urged it to pass a statute repealing an exemption granted in a railroad charter in 1882, and although a bill for that purpose was introduced and urged upon it, yet the legislature steadfastly refused to pass such bill into a law, and defeated said measure so introduced.

VII.

Complaining further, your orator now shows that the legislature of the State of Mississippi, by an act entitled, "An act to incorporate the Natchez & Jackson Railroad Company," approved July 21, 1870, did incorporate the railroad company of that name with authority to build a line of railroad from Natchez, to Jackson, in the State of Mississippi; the charter of said railroad company being subsequently amended so as to change the name thereof to the Natchez,
13 Jackson & Columbus Railroad Company, with authority to extend its line from Jackson in a northeasterly direction to the city of Columbus, in said State. The said Natchez & Jackson Railroad Company, as stated above, was one of those companies to which, by the act of August 8, 1870, the privilege of the twenty-first section of the Mobile & Northwestern Railroad Company was extended, such extension being made to said company by the said State legislature prior to the acceptance by the said company of its charter and any organization thereunder. The said company accepted its charter so amended, and organized thereunder and entered upon the construction of the railroad therein provided for. The construction of said railroad was not begun until several years after its charter. Your orator is not exactly informed whether any work had been done upon the same prior to the decision of the Mississippi Mills case by the supreme court of this State stated above. But your orator does state it to be a fact, that it was not until January, 1879, nearly a full year after the decision of the Mississippi Mills case, that the said railroad was finished from the city of Natchez to the village of Martin, forty-three miles in the direction of Jackson; it was not until September, 1881, that it was extended from Martin to Miles, about fifteen miles nearer to the said city of Jackson, and it was not until October, 1882, four years and a half after the decision of said Mississippi Mills case, that the said railroad was constructed and put into operation to the city of Jackson. In the construction of said railroad, the said company issued capital stock to the par value of fifty dollars per share, aggregating $2,028,000, and also issued first-mortgage six per cent. gold bonds, payable in thirty years from date, to the sum of $1,250,000. And said railroad was constructed and equipped by the issuance and sale of said first-mortgage bonds, and by the sale of certain bonds subscribed by the city of Natchez and the county of Adams and the county of Hinds for stock of said road, and by the incurrence of a certain floating debt, with the details of which your orator is not precisely acquainted, said liability being contracted in conformity with and as contemplated by the charter of said company, and by section 21 of the said Mobile & Northwestern charter, incorporated into the charter of said company as aforesaid, and without the incurrence

of said liabilities and the expenditure of said moneys the said railroad could not have been constructed at all. And said railroad company constructed its said railroad and incurred said liability on the faith of and relying upon said section 21, incorporated into its said charter as aforesaid, as a material and valuable element of its said charter and privileges, and upon the decision in the Mississippi Mills case aforesaid, by which the supreme court of this State announced and declared the meaning of the constitution of 1869, and the status and value of such charter provision thereunder.

VIII.

Your orator further shows that at the time when the legislature of 1870 was in session, and the legislation aforesaid was had, the financial and industrial conditions of the State of Mississippi were in exceedingly low condition—in fact in a condition which seemed quite desperate. The State had been impoverished to an extraordinary degree by the result of the civil war. The values of lands had materially depreciated and the process of recovery, financially and industrially, had been exceedingly slow, and the outlook for the future was quite unpromising. The entire railroad system of the State consisted of the few railroads which had been constructed before the war. They were as follows:

1. The Mississippi & Tennessee, which ran from Memphis to Grenada.

2. The Mississippi Central, which ran from Jackson, Tenn., to Canton, Miss.

3. The New Orleans, Jackson & Great Northern, which ran from Canton, Miss., to New Orleans, La.

4. The Mobile & Ohio, which ran from Jackson, Tenn., to Mobile, Ala.

5. The Memphis & Charleston, which ran from Memphis to Chattanooga, Tenn., about thirty miles in this State.

6. The Vicksburg & Meridian, which ran from Vicksburg to Meridian in this State.

7. The West Feliciana, which ran from Woodville, in Wilkinson county, to Bayou Sara, in Louisiana, about eight miles in this State.

These few railroads, separated by great distances, were entirely inadequate to the development of the State, and there was urgent need for the building of more, and the enterprise from Jackson to Natchez, aforesaid, was the first which was practically undertaken after the war, except the Mobile & Northwestern, itself a narrow-gauge road thirty-one miles long in Coahoma county, and except the Ship Island, Ripley & Kentucky railroad, a narrow-gauge railroad in Tippah county, Miss., twenty-five miles long—both of which were incorporated by the same legislature and with the same privileges.

The said Natchez & Jackson railroad being at that time, even when constructed, only a narrow-gauge road extending from Natchez to Jackson as aforesaid, and having no through traffic connection

with great traffic lines, was at a great disadvantage and could not keep pace in traffic arrangements and facilities with the general progress of railroad developments in the United States, in consequence of which fact, it did not prosper financially. Your orator is informed and believes and states that its earnings were not sufficient to enable it to pay its operating expenses and fixed charges, and that it was not able to pay anything whatever in the shape of dividends to its stockholders.

In the year 1882, the legislature of the State of Mississippi passed an act entitled, "An act to authorize the Memphis & Vicksburg Railroad Company and the Mississippi Valley and the Ship Island Railroad Companies to effect a consolidation," which said act was amended in March, 1884, by an act entitled, "An act to amend an act entitled, 'An act to authorize the Memphis & Vicksburg Railroad Company and the Mississippi Valley and the Ship Island Railroad Companies to effect a consolidation,' approved March 3rd, 1882." The aforesaid act of 1882 had incorporated in it, as section 5 thereof, the aforesaid section 21 of the Mobile & Northwestern Railroad charter. Under and by virtue of this legislation, a certain railroad company was constituted and organized in the year 1884, by the consolidation of the said Memphis & Vicksburg Railroad Company with the New Orleans, Baton Rouge, Vicksburg & Memphis Railroad Company (which also had been incorporated by the legislature of Mississippi in the year 1882), with a Louisiana railroad company, and also a Tennessee railroad company, the object of such consolidating railroad company being the construction of a through line of railroad from the city of Memphis, in the State of Tennessee, to the city of New Orleans, in the State of Louisiana, by way of Vicksburg, in the State of Mississippi. The said railroad was speedily constructed by the aforesaid constituent companies and by the consolidated company, in the years 1882, 1883 and 1884, so that through connection between the working gangs of the said railroads was made, and the first through train ran thereon about the first of December, 1884.

IX.

Your orator further complains and shows, that because of the unsatisfactory condition of the said Natchez & Jackson Railroad Company, and its enterprise, as stated above, in the year 1890,
16 the legislature of the State of Mississippi, passed the act entitled, "An act to authorize the Natchez, Jackson & Columbus Railroad Company to sell its railroad situated in this State, or to consolidate the same." Said act of the legislature was in words and figures, as follows:

"An act to authorize the Natchez, Jackson & Columbus Railroad Company to sell its railroad, situated in this State, or to consolidate the same."

"SECTION 1. Be it enacted by the legislature of the State of Mississippi, That the Natchez, Jackson & Columbus Railroad Company, incorporated on the 21st day of July, 1870, under the laws of this State,

be and it is hereby authorized and empowered to sell absolutely all or any part of its railroad and other property, lying, being and situated in the State of Mississippi, together with all franchises, rights, powers, privileges and immunities unto the said Natchez, Jackson & Columbus Railroad Company appertaining and belonging.

"SEC. 2. That the Louisville, New Orleans & Texas Railway Company and the Natchez, Jackson & Columbus Railroad Company are hereby authorized to consolidate with each other, under the name of the Louisville, New Orleans & Texas Railway Company, and upon such terms as may be agreed upon by said companies.

"SEC. 3. That this act take effect and be in force from and after its passage."

Approved February 19, 1890.

Complainant now states that the aforesaid act was introduced in the legislature by the Hon. William T. Martin who was president of the said railroad company and also a member of the senate and was passed by the legislature at his instance and request made in behalf of the said railroad company.

When such act of the legislature was passed not only had the case of the Mississippi mills been decided, as above stated, but also that case had been by the supreme court of Mississippi expressly followed, or its principle applied without express citation, in the subsequent and later cases of McCulloch *vs.* Stone, 64 Miss., decided at the October term, 1886; in Railroad Company *vs.* Thomas, 65 Miss., decided at the October term, 1888; in Bank *vs.* Worrall, 67 Miss., decided at the October term, 1889.

So that, by four consecutive decisions the said supreme court had fully and finally settled the doctrine that legislation by the State legislature, even where the same exempted property of railroad companies from taxation, was valid and binding until some other and subsequent legislature should see proper in the
17 exercise of its legislative authority to repeal such exemption and to revoke such grant.

In the case aforesaid of McCulloch *v.* Stone, the very paragraph, number 21, of the Mobile & Northwestern charter which had been imported by the act of 1882 into the charter of the Louisville, New Orleans & Texas Railway Company, was under consideration, and the supreme court, while deciding that the privilege therein conferred did not attach to outlying lands owned by said company, yet also did expressly declare that it did attach to such property of the company as was "necessary to the construction, equipment, maintenance and operation of its road."

Also, at the time of the passage by the legislature of said act of 1890, the said Natchez, Jackson & Columbus Railroad Company had been for many years, in fact, from the time when the construction of its road was commenced, in 1878 or before, up to that day (a period of at least twelve years) in the actual enjoyment, openly and notoriously, of the said privilege so conferred by its charter. The legislature of the State of Mississippi, in passing said act of 1890,

was well aware both of the adjudications of the supreme court of this State upon the validity of said section and also of the long-continued and then existing actual enjoyment of such privilege and immunity by the said railroad company. And complainant states that in the passage of said act, whereby the said Natchez, Jackson & Columbus Railroad Company was authorized to convey to any purchaser, not only its railroad and other property, but also "all franchises, rights, powers, privileges and immunities" pertaining to said company, the said legislature did intend that such sale should convey to the purchaser of said road the privilege and immunity of said section 21, aforesaid.

Complainant further states that under and pursuant to said act of 1890, and relying upon the same, and relying upon said section 21, and its privileges and immunity, as part of the charter of the Natchez, Jackson & Columbus Railroad Company, and relying upon the decision of the supreme court of the said State in the Mississippi Mills case, and the McCulloch case and other cases named above, and relying upon the fact that such privilege and immunity had been openly and notoriously enjoyed under its charter and said decisions by said Natchez, Jackson & Columbus Railroad Company for a period of full twelve years without cavil or question, and upon the further fact that in the legislatures of 1886 and 1888, as stated above, efforts had been made to repeal this privilege, with others of the same character, which the legislature had refused to do—the said Louisville, New Orleans & Texas Railroad Company, in good faith and without any notice of the claim now propounded
18 for taxes against said railroad and property, did pay therefor an enormous value, to wit: it did pay to the said Natchez, Jackson & Columbus Railroad Company for its equity of redemption in said property, the sum of $180,000 in cash, and undertook to provide for the payment of the said outstanding first-mortgage bonds and of the interest thereon subsequent to the coupons of March 1, 1890. And further, the said Louisville, New Orleans & Texas Railway Company, pursuant to its said agreement, did purchase the said $1,250,000 of outstanding bonds of the said Natchez, Jackson & Columbus Railroad Company, paying therefore $800,000 of its own first-mortgage four per cent. gold bonds, which constituted a mortgage on its entire line of railroad from Memphis to New Orleans as aforesaid (as by its charter the said Louisville, New Orleans & Texas Railway Company had a right to do), which bonds so delivered by it were payable to bearer in the city of New York and were negotiable instruments and are now outstanding in the hands of *bona fide* purchases for value without notice, freed of any equities or defenses which might be set up thereto by the said Louisville, New Orleans & Texas Railway Company, or its successors. A copy of the conveyance by the said Natchez, Jackson & Columbus Railroad Company to the said Louisville, New Orleans & Texas Railway Company of said railroad property is herewith filed, marked Exhibit "A," and prayed to be taken as a part of this bill.

X.

Your orator further complains and shows that said charter of the Natchez, Jackson & Columbus Railroad Company, including the privilege of said section 21 aforesaid, and the right to transfer the same to said Louisville, New Orleans & Texas Railway Company; and the actual transfer made as aforesaid, which included the said privileges and immunities as aforesaid, were contracts which the respective parties thereto had a right to make at the time they were made and entered into, in view of the settled law as declared to them by the supreme court of said State at the time when such agreements were formed; and, moreover, that such contracts were made by express permission of the State of Mississippi, given in and by said act of 1890, as aforesaid; and that said contracts so made were valid under the constitution and laws of the State of Mississippi, as such constitution and laws had been previously expounded, as aforesaid, and that the obligation of said contract, including that of said privilege and immunity of section 21, were at the time made, and have ever since continued to be, and now are, binding upon the said State, and that no subsequent change of decision by the judicial tribunals of said State can invalidate such contract, nor
19 impair its obligation; nor can any subsequent change in the decision as to the constitutional power of the legislature to enact said act of incorporation and grant said exemption, change or impair the rights of the parties under said charter contract, which was as aforesaid, valid when made.

Further, your orator states that notwithstanding the fact that in various of the decisions made by the supreme court of the State of Mississippi, the said privilege of section 21 has been denominated as "exemption" from taxation, the railroad companies interested in that question have never accepted that view, and your orator does not admit it, but, on the contrary, denies that the same was an "exemption" within the purview of section 13, article XII of the constitution of 1869. On the contrary, your orator charges that the same was not an exemption in that sense at all, but that the privilege of said section is exactly what it purports to be. It is a contract of appropriation as aforesaid, whereby the legislature authorized a special and peculiar mode of paying taxes, and a special and peculiar method of granting aid to the construction of said railroads; which is entirely other and different from an exemption, and is not and never was within the prohibition of section 13, article XII, aforesaid. The same is and was a contract within the meaning of the Constitution of the United States, which forbids any State to pass a law impairing the obligation of a contract. The difference between the two views in regard to said privilege has not heretofore been material, for the reason that the legislature of this State has never proceeded upon the idea that it had the right to repeal the same under and by virtue of the constitution of 1869, but has always refused so to do, and so long as they did so refuse, it mattered nothing to the companies interested, whether the privilege was called the one thing or the other by the courts. And your orator protests and says that

the right conferred by said action on said railroad companies was and is a contract, as your orator claims and asserts that it was, which the legislature itself could not repeal, still less could it be abrogated and set aside by a change of the judicial decisions of this State.

Neither, on the other hand, if such privilege be regarded as an exemption, and within the operation of the constitution of 1869, could the courts of this State, by a change in their decisions, do that which the constitution reserved to the legislature alone—that is to say, subvert and take away such privilege regarding the same as an exemption only, and yet such action by the courts has been undertaken, and is by the proceedings herein sought to be enjoined, about to be carried out in the manner which will hereinafter be set forth.

XI.

Your orator states further that the decisions above set forth affirming the right of the legislature to enact such laws as section 21 of the Mobile & Northwestern charter, even granting the same to be "exemptions" within the purview of the constitution of 1869, were further followed at the October term, 1890, by the two cases of The Railway Company *vs.* Taylor and Attala County *vs.* Kelly, reported in 68 Miss. Reports. In the Taylor case, the idential section was again under consideration as part of the charter of the said Louisville, New Orleans & Texas Railway Company, and the said supreme court again upheld the same and gave the said company the benefit of it.

Furthermore, your orator shows that on the 1st day of November, 1890, the people of the State of Mississippi, in delegate convention assembled, adopted and promulgated a new constitution which superseded the constitution of 1869. That new constitution contained in it a chapter on the subject of "corporations" which had not appeared in any previous constitution of said State, and in that chapter were introduced many new and drastic measures in respect to corporations, their creation, rights, powers and liabilities. Yet, nevertheless, in section 181 of said constitution, which section was the outcome and continuance of section 13, article XII of the constitution of 1869, and the opening sentence of which was as follows: "The property of all private corporations for pecuniary gain shall be taxed in the same way and to the same extent as the property of individuals"—there was a special reservation of the then existing rights to exemptions previously conferred. The section contains this language: "Exemptions from taxation to which corporations are legally entitled at the adoption of this constitution, shall remain in full force and effect for the time of such exemptions as expressed in their respective charters, or by general laws, unless sooner repealed by the legislature." And section 279 of said constitution was as follows:

"All rights, actions, causes of action, proceedings, prosecutions, and rights of individuals and bodies corporate, and of the State, and charters of incorporation, shall continue," etc.

Your orator states that the said Hon. William T. Martin, president of said Natchez, Jackson & Columbus Railroad Company, and formerly State senator of 1890, and the author of the law of 1890 aforesaid, was a member of said constitutional convention and participated in the making of that constitution, and your orator states that the said convention was well aware of the existing decisions of the supreme court of said State upon the questions hereinbefore set forth, and of the sale of 1890 of the Natchez, Jackson & Columbus railroad, with its immunities and privileges to the Louisville, New Orleans & Texas Railway Company aforesaid, and of the statute of 1890
21 aforesaid, giving consent of the State thereto, and of the uniform recognition by all of the officials, executive and legislative, as well as judicial, of the State up to that time of the validity of this privilege and others of similar character, and of the continued enjoyment of such privilege and immunity of the said Natchez, Jackson & Columbus Railroad Company from the year 1878 until the date of the promulgation of said constitution; and the said convention did thereby intend to preserve and continue the said privilege and immunity amongst others of similar character then existing in this State.

The said Taylor case, mentioned above, was decided in the month of March, 1891, about four months after the promulgation of said constitution, and in and by the adjudication of the court in said case, speaking of the said section 21 as a part of the charter of the Louisville, New Orleans & Texas Railway Company, the said supreme court declared that it was and had been a privilege to which said company was legally entitled, and virtually adjudged that it was such a privilege as the constitution intended to continue. By inevitable consequence, the same thing must have been true, and it was by necessary implication, adjudged in respect to the same section 21 as a part of the charter of the Natchez, Jackson & Columbus Railroad Company, transferred as aforesaid on the date aforesaid and under the act of the legislature aforesaid to the said Louisville, New Orleans & Texas Railway Company in 1890.

XII.

Your orator now complains and shows further that in the year 1872, the legislature of the State of Mississippi incorporated a business corporation under the name and style of the Mississippi Valley Company, with its domicile and place of business in McComb city, in said State.

In or about the year 1876, your orator had acquired for value all of the stock of the Mississippi Valley Company except four shares thereof and continued to hold the same and does hold the same until this date.

In the month of April, 1892, the said Mississippi Valley Company did purchase of the said Louisville, New Orleans & Texas Railway Company 37,539 shares out of the total amount of 48,242 shares, paying therefor large value, and at the same time your orator did purchase of the first-mortgage four per cent. gold bonds of the said Louisville, New Orleans & Texas Railway Com-

pany the sum of $13,805,000 with the interest coupons thereunto attached, and of the second-mortgage bonds of said company the sum of $8,731,000 with the coupons thereunto attached, and of the income bonds of said company, the sum of $8,347,000 with
22 the interest coupons thereunto attached paying for the same large value, and the said Mississippi Valley Company and your orator each and both made such purchase relying upon the legislation all as aforesaid, and upon the said judicial decisions of said State of Mississippi all as aforesaid, and on the faith thereof, and relying upon the sale made as aforesaid of the property and railroad and immunities and franchises as aforesaid, by the sanction and permission especially given of the legislature of said State from the said Natchez, Jackson & Columbus Railroad Company to the said Louisville, New Orleans & Texas Railway Company as aforesaid. And your orator further shows that the said $1,250,000 of mortgage bonds of the said Natchez, Jackson & Columbus Railroad Company, which the said Louisville, New Orleans & Texas Railway Company had acquired as aforesaid had not been extinguished and canceled, but had been, pursuant to its contract and agreement, by the said Louisville, New Orleans & Texas Railroad Company, placed in trust as collateral security for the payment of the coupons and principal of the entire issue of the first-mortgage bonds and of the second-mortgage bonds of the said Louisville, New Orleans & Texas Railway Company, including those purchased as aforesaid by your orator. This method was adopted so that, without taking the trouble and expense of executing a new mortgage upon the property and immunities acquired from the said Natchez, Jackson & Columbus Railroad Company, and without the disarrangement of interests which such new mortgage, if executed, might have caused, the property so acquired including such franchises and such immunities, should be practically covered by and included within the first and second mortgages of the said Louisville, New Orleans & Texas Railway Company, $800,000 of its first-mortgage bonds having been by said railway company paid out in the acquisition of said property as aforesaid. Whereby in the purchase of said thirteen million of first-mortgage bonds, as aforesaid, and of said eight million of second-mortgage bonds, as aforesaid, your orator acquired as part of its security a lien upon the property, including the franchises and immunities and privileges aforesaid of the Natchez, Jackson & Columbus railroad.

A copy of the collateral trust mortgage of date November 1, 1890, from the Financial Improvement Company to the Union Trust Company of New York, as trustee, whereby such collateral trust was created, is filed with this bill, marked Exhibit B, and prayed to be taken as part hereof.

XIII.

Further complaining your orator shows that the purchase of bonds hereinbefore set forth as first, second and third mort-
23 gages of the said Louisville, New Orleans & Texas Railway Company, and the purchase of the stock hereinbefore set

forth of the said Louisville, New Orleans & Texas Railway Company, made by the Mississippi Valley Company, were paid for by your orator, in four per cent. gold bonds of your orator, payable in 1953, to the amount of $20,000,000, which said bonds were made payable to bearer in the city of New York, and are negotiable and have been delivered and transferred to *bona fide* purchasers for value, without notice, freed from all equities and defenses.

In order to secure the payment of such bonds so issued by your orator, and also an additional amount of similar bonds, sufficient to make the total issue the sum of $25,000,000, your orator did, relying upon the adjudications and legislation aforesaid, and the said constitutional provisions, and said action of the legislature in refusing in any way to prejudice or repeal the said privilege of section 21, as the same appertained both to the property that was of the Louisville, New Orleans and Texas, and had been of the Natchez, Jackson & Columbus Company, executed its certain indenture, dated the first of September, 1892, whereby it placed in the hands of the United States Trust Company, of New York city, a corporation created under the laws of New York, all of the first, second and third mortgage bonds of the said Louisville, New Orleans & Texas Railway Company, purchased by it, as aforesaid, (including their collaterals, to wit, the said first-mortgage bonds of the Natchez, Jackson & Columbus Railroad Company) representing a par value of over $34,000,000, as collateral security for the payment of its said issue of $25,000,000.

XIV.

Further complaining, your orator states that on the 24th day of October, 1892, the said Louisville, New Orleans & Texas Railway Company, and the Yazoo & Mississippi Valley Railroad Company (a company which had been incorporated by the legislature of the State of Mississippi in the year 1882) pursuant to authorities conferred upon them by their respective charters, effected a consolidation whereby the existence of the Louisville, New Orleans & Texas Railway Company was merged into that of the Yazoo & Mississippi Valley Railroad Company, and all of the property, real and personal, and all of the rights, franchises, privileges and immunities of the said Louisville, New Orleans & Texas Railway Company were transferred to and became the property, rights, privileges, franchises and immunities of the said Yazoo & Mississippi Valley Railroad Company. Such consolidation was effected by the said two companies in the light of and on the faith of the previous adju-
24 dications and legislative and constitutional enactments hereinbefore stated; and as a material part of the contract of consolidation between the said two companies, and considered and held in view, was the fact that by such consolidation the special privilege and immunity of section 21 of the Mobile & Northwestern charter, as applied to the taxes to be assessed against the property of the original Louisville, New Orleans & Texas Railway Company, and as well the property by it acquired from the Natchez, Jackson and Columbus Railroad Company, should pass to and be enjoyed

by the said Yazoo & Mississippi Valley Railroad Company. A copy of said articles of consolidation is herewith filed marked "Exhibit C," and is prayed to be taken as part of this bill.

After such consolidation was effected the supreme court of the State of Mississippi, in the case of Railroad *vs.* Lambert, reported in 70 Mississippi, again passed upon said section 21, and passed upon said section as being a part of the charter of the Natchez, Jackson & Columbus Railroad Company as passed to the said Louisville, New Orleans & Texas Railroad Company by the sale of 1890, and also as passed to the said Yazoo & Mississippi Valley Railroad Company by the consolidation of 1892. The said supreme court in said case reaffirmed the doctrine of the case of Mississippi mills aforesaid, and held that the said privilege of section 21 was valid and lawful and effectual, and did inure to the benefit of the Louisville, New Orleans & Texas Railroad Company as to the property that had been the property of the Natchez, Jackson & Columbus Railroad Company, by the purchase of 1890; and further, that the said privilege did also inure as to the same property to the Yazoo & Mississippi Valley Railroad Company by virtue of the consolidation of October, 1892, as aforesaid; and after the said decision was made, your orator, relying upon the said decision and the previous decisions hereinbefore stated, and upon the legislative and constitutional provisions hereinbefore set forth, and upon the refusal of the legislature, as aforesaid, to interfere by the repeal or attempted repeal of such section 21, did issue and pay out many more of its said bonds of 1892 described in the preceding paragraph of this bill, for the payment of obligations and the indebtedness of the said Louisville, New Orleans & Texas Railway Company, and for protecting, repairing, completing, improving, and extending the railroad and branches owned by the said Louisville, New Orleans & Texas Railway Company, and acquired by the said Yazoo & Mississippi Valley Railroad Company through such consolidation, and in providing elevators and docks for use in connection therewith, and in providing such work and structures, rolling stock and other equipment as would enable the said railroad that had been the property of the Louisville, New Orleans & Texas Railway Company, including the railroad from Natchez to Jackson acquired by the purchase of 1890, as aforesaid, to be operated to the best advantage, and in the payment of debts and liabilities incurred for such improvements and betterments.

XV.

Further complaining, your orator now shows that the defendant herein, the State revenue agent, proceeding under authority claimed to be invested in him by chapter 126 of the Annotated Code of 1892, as amended by an act of the legislature passed in the year 1894, inaugurated and conducted certain suits against your orator and the said Yazoo & Mississippi Valley Railroad Company, in which he demanded taxes for the years 1892, 1893, 1894, and 1895, such taxes having been assessed against the property that had been the property of the Louisville, New Orleans & Texas Railway Company, and

had been acquired by the said Yazoo & Mississippi Railroad Company by such consolidation of 1892, but not including any taxes upon property that had formerly been property of the Natchez, Jackson & Columbus Railroad Company.

If it is not necessary to set forth in this bill in detail the progress and scope of that litigation, it is sufficient to say that on the 20th day of June, 1898, the supreme court of this State rendered in such cause a decision wherein they held, amongst other things, that the constitution of 1869 meant that the property of corporations for pecuniary profit should actually be subjected to taxation, and it did in express terms overrule the Mississippi Mills case aforesaid, and by necessary consequence overruled all subsequent cases holding the same doctrine, and did in express terms declare that the said section 21 of the Mobile & Northwestern railroad charter was unconstitutional and null and void *ab initio*. By this decision the supreme court of said State overturn and reverse the settled constitutional construction and the constitutional status of said statute and of similar statutes which had been repeatedly declared valid by the supreme court itself for fully twenty years, and had been commonly accepted and acted upon without question, as shown, by all the departments of the State government, executive and legislative as well as judicial, and by the constitutional convention of 1890, and on the faith of which not only the numerous and enormously great pecuniary transactions hereinbefore set forth had been passed, but also upon which all sorts of contracts impossible for your orator to enumerate had been entered into, and all sorts of obligations and liabilities incurred by all sorts of corporations
26 organized and doing business in this State for a quarter of a century.

Your orator further states that such decision and action upon the part of the supreme court, when sought to be practically applied, as it is now being sought to be so applied by the defendants herein, as will be hereafter shown, is subversive of the various contract rights and contract obligations hereinbefore set forth, in which your orator is directly and pecuniarily interested, and is in conflict with the provisions of the Constitution of the United States which declares that no State shall pass any law impairing the obligation of a contract; and is also in conflict with those provisions in the fourteenth amendment to the Constitution of the United States which declare that no State shall deprive any person of his property without due process of law, or deny to any citizen of the United States the equal protection of the law.

XVI.

Further complaining, your orator shows that, relying upon the extraordinary and shocking decision of the said supreme court above mentioned, the defendant in this cause, The State Revenue Agent, proceeding under the claim of authority aforesaid, made application to the State railroad commission, organized as described in the opening portion of this bill, that they should proceed under the said law of 1894, and assess the property hereinbefore described,

which had been the property of the Natchez, Jackson & Columbus Railroad Company, for back taxes for the years 1886, 1887, 1888, 1889, 1890 and 1891, and to assess such taxes against the Yazoo & Mississippi Railroad Company aforesaid as the owner at this time of said property, and against the Natchez, Jackson & Columbus Railroad Company as the owner of the same during the years 1886, to 1890, inclusive. And proceeding under the request of the State revenue agent, as aforesaid, the said railroad commission did on the first day of August, 1898, proceed to assess taxes against the said Yazoo & Mississippi Valley Railroad Company as owner, and the Natchez, Jackson & Columbus Railroad Company as owner, and against said property as aforesaid, all as follows, to wit:

At a valuation of five thousand dollars per mile of track, for the years 1886, 1887, 1888 and 1890; and at the rate of nine thousand dollars per mile of track for the year 1891; the aggregate of such assessment, and of the taxes demanded thereon, being as follows:

1. For the county of Hinds the sum of $—.
2. For the county of Copiah the sum of $—.
3. For the county of Claiborne the sum of $—.

27 4. For the county of Franklin the sum of $—.

5. For the county of Adams the sum of $—.
6. For the city of Natchez the sum of $—.
7. For the city of Fayette the sum of $—.
8. For the city of Harrison the sum of $—.
9. For the village of Martin the sum of $—.
10. For the village of Myles the sum of $—.
11. For the town of Utica the sum of $—.
12. For the town of Learned the sum of $—.
13. For the town of Raymond the sum of $—.
14. For the city of Jackson the sum of $—.
15. For the State of Mississippi the sum of $—.

Making a total assessment of unlawful taxes as aforesaid of more than fifty thousand dollars.

XVII.

Humbly complaining, your orator states further that it exhibits herewith as Exhibit D to this bill, and prays that the same be made a part thereof, the application of the State revenue agent that the said back taxes be assessed, and the findings of said railroad commission pursuant thereto.

Your orator cannot say whether it be true, as stated in the said revenue agent's application and in the said order of the said railroad commission, that the property so proceeded against had not been assessed for taxes, and if material, which it denies, demands strict proof thereof. It may be true, as stated, that it had not been assessed, but if true, your orator states further that the failure so to assess it was the failure of the State's own officers whose duty it was to assess the said railroad property for taxation, and for their failure so to do the said railroad company was not responsible, nor were its successors so responsible.

Your orator charges that if the said officers, whose duty it was

to make said assessment, did fail to make the same, as the State revenue agent claims, such failure was but another instance of the uniform manner in which, as stated above, the privilege of section 21 of the Mobile & Northwestern charter, in respect to this property, was universally recognized by all departments of this State, including the executive or tax-collecting department, and it was because the said officers, composed of the auditor of public accounts, the treasurer of the State and the secretary of the State, whose duty it was, under the Code of 1880, to assess railroads for taxation, regarded the said property as exempt from taxation, and not required to be assessed under the law. However that may be, your orator says that the same is irrelevant and immaterial as to the taxes now sought to be imposed for the years 1886, 1887,
28 1888 and 1889, for the reason that in March, 1890, as stated above, the said Louisville, New Orleans & Texas Railway Company purchased the property of the said Natchez, Jackson & Columbus Railroad Company for value and without notice of any such claim for taxes of those years as is now propounded by the State revenue agent and there was not anywhere, on any of the records of this State or any of the counties, or any of the municipalities in whose right the revenue agent is now pursuing the said property for the taxes of aforesaid, any record of taxes assessed against the same and unpaid, and the said purchaser had no notice of any outstanding unsatisfied liability for taxes for said years, and had no notice but what the said taxes had been duly settled conformably to law. Never having been assessed according to the theory of the revenue agent himself, the same had not become a liability of the property of the company, and constituted no charge upon the property, and the said Louisville, New Orleans & Texas Railway Company took the said property as a *bona fide* purchaser without notice, freed from any such liability to be afterwards created by retroactive assessment.

XVIII.

Your orator further states and shows that as to the said taxes from 1886 to 1889 inclusive, now sought to be collected by assessment this year made as aforesaid, by the State revenue agent, and also as to the said taxes for the years 1890 and 1891, it is irrelevant and immaterial that the same had not been heretofore assessed, for the reason that by the consolidation effected between the Louisville, New Orleans & Texas Railway Company and the Yazoo & Mississippi Valley Railroad Company, as aforesaid, in October, 1892, the said Yazoo & Mississippi Valley Railroad Company, as consolidated, took the property that had been the property of the Natchez, Jackson & Columbus Railroad Company, as well as that which had been the property, originally, of the Louisville, New Orleans & Texas Railroad Company, as *bona fide* purchaser without notice of any such claim for unpaid and unsatisfied taxes, as is by the State revenue agent for the first time propounded. Such taxes had never been assessed against the said property, or against the said Louisville, New Orleans & Texas Railway Company as owner thereof, and had never been

assessed until this proceeding described above, in the year 1898; and your orator states as to all of said taxes it is now unlawful and unconstitutional to attempt by this proceeding, and by a retroactive assessment which will overreach the said contract of consolidation, and will further overreach the said contract of purchase in
29 1890, as to all of said taxes, except those for the years 1890 and 1891, and to effect with the same the holder of said property, who acquired the same in the latter part of the year 1892. Such action, if it were allowed to be effectuated, would impair the obligation of the contract of purchase and the obligation of the contract of consolidation aforesaid, and would be a deprivation of your orator's property and that of all other holders of bonds as aforesaid, for security, as aforesaid, without due process of law, and would be a denial to them of the equal protection of the law.

And on information and belief, your orator avers that in the years 1886, 1887, 1888 and 1889, the said Natchez, Jackson & Columbus Railroad Company paid in each year and in the years 1890 and 1891, the said Louisville, New Orleans & Texas Railway Company, paid in each year taxes which were assessable and demandable under the charter of the Natchez, Jackson & Columbus Railroad Company as amended by the act of August 8th, 1870, as aforesaid, such taxes being paid by the said two companies in the said years, respectively, as named just hereinabove, on the construction debt of the said Natchez & Jackson railroad in exact conformity to the said charter as amended; and in each of said years said companies, respectively, were each qualified and entitled, under the said charter as so amended, to make the affidavits therein provided for and to have and receive from the respective tax collectors the receipts therein provided for, and would have made such affidavits and received such receipts, had the same been assessed conformably to law.

Your orator now further avers that the said Natchez, Jackson and Columbus Railroad Company is extinct, and the said Louisville, New Orleans and Texas Railway Company is extinct, and the persons who were officers of each of said companies, and who were qualified under said charter so amended to make affidavits in said charter provided for, are none of them in the employment or in any way under the control of your orator, or of the said Yazoo and Mississippi Valley Railroad Company, and if the assessment so wrongfully made, as herein stated, on the 2nd day of August, 1898, to have retroactive operation for the years 1886 to 1891, inclusive, shall be allowed to stand, the said affidavits provided for in said charter so amended cannot now be made, although the conditions in said charter in respect to payment on construction debt year by year have been fully met and complied with, and the inability to make such affidavits arises from no fault whatever or neglect of either your orator or said Yazoo and Mississippi Valley Railroad Company, or said Louisville, New Orleans and Texas Railway Company, or of the said Natchez, Jackson and Columbus
30 Railway Company, but arises wholly because of the default of the officers and agents who constituted the board of

railway assessors of the State of Mississippi, and who were in no way subject to the control of any of the railway companies concerned in this matter, or of your orator, or of the said Yazoo and Mississippi Valley Railroad Company.

Your orator avers that the scheme of said charters as amended was manifestly intended by the legislature to be worked out year by year. The question of taxation of the property of the railroad company was intended to be settled in said years in each year, respectively, and it was intended by the statute that, by affidavits made in each year setting forth the proper payments on account of the construction debt, such liability as has been imposed upon the company by assessments for taxation fully made should be discharged and paid off. It never was contemplated by the legislature that long years after any given year had passed, and perhaps long years after the officers who were qualified under the statute to make an affidavit therein called for should have died, or removed, or in any way had gotten beyond the service and control of the railroad companies interested, without the default of said railroads (which, as averred above, is actually what has occurred in this case) by a retroactive assessment reaching over the term of twelve to fifteen years, the company interested could be deprived of its privileges under said statute.

XIX.

Your orator further complains and shows that during the year 1886, and long prior to the purchase by the Louisville, New Orleans & Texas Railway Company of the Natchez & Jackson railroad, as hereinbefore set forth, the said Louisville, New Orleans and Texas Railway Company, executed upon its railway property then owned, and hereafter to be acquired, and upon the rents, issues, tolls, incomes, earnings and profits thereof, a certain first mortgage, bearing date August 25, 1886, for the purpose of securing the sum of $16,900,000 of first-mortgage four per cent. gold bonds, which were to mature on the first day of September, 1934. A copy of said mortgage is herewith filed marked "Exhibit E" and is prayed to be taken as a part of this bill.

On the next day following, the said company did execute its second mortgage, dated August 26, 1886, on its entire railroad property then owned by it or thereafter to be acquired until the length of said railways should amount in the aggregate to 800 miles, together with all rents, tolls, issues, incomes, earnings and profits thereof, to secure its second-mortgage five per cent. gold
31 bonds, payable the first of September, 1934, to an amount not to exceed $20,000 per mile of railroad (and under which mortgage, subsequently, bonds to the amount of $10,000,000 were in fact executed, being the bonds of which your orator purchased over $8,000,000, as hereinbefore stated, in the year 1892). A copy of said second mortgage is herewith filed, marked Exhibit "F," and prayed to be taken as a part of this bill.

And afterwards, the said Louisville, New Orleans & Texas Railway Company, executed a third mortgage, dated August 27, 1886,

commonly called by said company, and those dealing with it, the land-grant income mortgage, sometimes called the income mortgage, upon all of the lands of the said company in the counties of Desoto, Tunica, Quitman, Coahoma, Bolivar, Washington, Sharkey, Issaquena, Warren, and Tate, in the State of Mississippi, not required by said company to be used in the construction or operation of its railroad branches, together with the rents or profits thereof and payments unpaid by parties who had purchased theretofore of said lands, and also upon all the rents, tolls, issues, incomes, earnings and profits of its railways then owned or thereafter to be acquired—such mortgage being for the purpose of securing a third issue of bonds payable fifty years after date, not to exceed $20,000 per mile of railroad, and to bear such interest, not exceeding six per centum per annum as the net earnings and income of said railroad should suffice to pay. A copy of the said land-grant income mortgage is herewith filed, marked Exhibit G, and is prayed to be taken as a part of this bill.

Your orator states further that by the terms of said first and second mortgages, and said land-grant mortgage, the said Jackson & Natchez road, when the same was acquired by purchase by the said Louisville, New Orleans and Texas Railway Company in the year 1890 as aforesaid, became subject to the terms and stipulations and encumbrances of each and every of said mortgages, for the benefit of all holders of each and every series of bonds by said mortgages secured respectively, the said railroads of the said Louisville, New Orleans & Texas Railway Company, even with the addition of the one hundred miles so acquired by it by said purchase, not at that time being so great as 800 miles.

Your orator further avers that the bonds secured by the second mortgage aforesaid on their face stipulated as follows, as will appear from the mortgage itself herewith filed as Exhibit "F."

"The interest on this bond shall be payable only out of the net earnings of the said railway company after making the deductions therefrom provided for in the said mortgage or deed of trust
32 securing the same, and shall not be due any time during the currency of this bond until the amount payable in respect thereof shall have been determined and declared by the board of directors of said railway company. And said interest shall be cumulative and in case less than two and a half per centum be paid in any half year, the unpaid interest, with interest on said unpaid interest, at the rate of five per centum per annum shall be carried forward to the credit of this bond for subsequent payment as such net earnings after said deductions shall suffice therefor, or at the maturity of the bonds. All arrears of such interest, with the accrued interest thereon (so far as the same shall not have been previously paid) shall be paid with the principal of this bond on the first day of September, 1934, and no dividend shall be paid upon the stock of the company or its income bonds until interest hereon, calculated at the rate of five per centum per annum from the first day of September, 1888, and payable semi-annually, together with

the accrued interest on any arrears of such interest, shall have been fully paid."

And the said mortgage provided in respect to the deductions to be made from such net earnings, according to the statement of said bond as follows: That these deductions were to consist of outlays for "all such repairs and replacements as it or they might deem judicious; and all such useful alterations, conditions and improvements as the income coming into its or their hands, shall be adequate to pay for;" and also "the proper expenses of holding, operating and managing said railroad and other premises and conducting the business thereof, to the payment of and for all taxes and assessments which shall be levied or assessed thereon, and all necessary and proper repairs, replacements, alterations and additions and improvements upon said property, and all expenses, costs, charges and counsel's fees in the premises of the said party of the second part or its successor in the trust and a reasonable compensation for their services, and next to the payment of the principal and interest of the said bonds according to the tenor and effect thereof, as the same may become due and payable;" and the said bonds on their face provided that they were subject to the bonds of the first mortgage herein aforesaid. Wherefore, in brief, your orator says that the right of the holders of said second-mortgage bonds to receive payment of the coupons of interest thereon was subject to the interest on the first-mortgage bonds and the operating expenses of said railroad and taxes, and if the earnings of said road do not suffice to pay all of said prior charges, the said holders of said second-mortgage bonds were and are not entitled to receive their interest, except to the extent of what sur-lus might in
33 fact be earned over and above such charges until the year 1934.

Your orator further states that the bonds secured by said land-grant income mortgage (of which your orator in the year 1892 purchased over $8,000,000 as aforesaid) were issued to the amount of, to wit: $10,000,000 in round numbers, and each of said bonds, as is shown by said Exhibit G, herewith filed, stipulated on its face in respect to the interest thereon as follows: That said interest should be payable "annually, on the first day of November in each year, at its agency in New York city, on presentation of this bond for endorsement of such payment thereon, such interest on said principal sum (not exceeding, however, six per cent. per annum) as the net earnings of said railway company from its railways in each current year ending on the 1st day of July next preceding the day above fixed for the payment of the annual interest hereon, shall suffice to pay upon all the bonds of this issue outstanding on such first day of July, after first paying from the earnings and the income of said company from said railways, the expenses of operating said railways, and of keeping up and maintaining the same with their appurtenances, and of all improvements, additions, betterments, renewals, acquisitions, and of providing and keeping up suitable equipments and the expense of conducting said company's business and affairs and maintaining its corporate organization, and for

likewise paying from said earnings and income the interest payable from time to time upon such other bonds of said company, or its successors, as shall be from time to time outstanding, and such amounts as may be prescribed to be paid to or towards sinking funds for the redemption thereof. And if in any year the amount as ascertained and determined to be applicable to the payment of this issue, shall not be sufficient for the full payment of interest at the rate of six per cent. per annum thereon, the amount of such deficiency, whether partial or total, shall not be cumulated or be made up out of any surplus income of subsequent years, but shall be absolutely waived, relinquished and discharged."

Wherefore, your orator states that the interest to be received by it and by other holders of said income bonds is contingent entirely and absolutely from year to year upon the net earnings of said road after the payment of the coupons of interest on the first and second mortgages in full, and the operating expenses of said road and taxes and is not cumulative all as is shown in said Exhibit F.

Your orator further states that prior to the year 1893 the entire earnings of the property of the said Louisville, New Or-
34 leans & Texas Railway Company, including the property of the Natchez & Jackson road, so purchased in the year 1890, were not sufficient to pay the charges as aforesaid, which had to be paid off before the holders of the second-mortgage bonds, aforesaid, were entitled to receive any payment on their said coupons of interest, and before the said holders of said income mortgage bonds were entitled to receive any interest on account of their said bonds. That beginning with the year 1893, under the new management inaugurated in October, 1892, the earnings of such company were sufficient to enable it to pay off said charges which were prior to the right and claim of the holders of the second mortgage for their interest, and leaving a balance in hand available to the payment of such second-mortgage interest, and it was paid accordingly to the holders of the second-mortgage bonds, so far as the same would go in payment of their coupons of interest, to the amounts following, to wit:

Paid on second-mortgage coupons, Sept. 1, 1893.....	$198,451.42
Paid on second-mortgage coupons, Sept. 1, 1894.....	219,133.75
Paid on second-mortgage coupons, Sept. 1, 1895.....	261,901.26
Paid on second-mortgage coupons, Sept. 1, 1896.....	500,837.00
Paid on second-mortgage coupons, Sept. 1, 1897.....	470,441.28
Total.....	$1,650,764.71

Your orator states that the amount of interest payable on said second-mortgage bonds for and from the year 1890 (which was the year as aforesaid in which the said Natchez & Jackson railroad property became subject to the operation of said mortgages as aforesaid), to the year 1897, inclusive, was the sum of $4,000,000, and the said payments made on account thereof, during the years 1893 to 1897, as stated just above, was not sufficient to satisfy the said

coupons by the sum of $2,349,253.29, without making any allowance whatever for the stipulated five per cent. interest on unpaid coupons.

Your orator states further that in such condition of affairs it is obvious, and your orator states it to be a fact, that said earnings have never sufficed to pay anything whatever in the way of interest on said land-grant income bonds.

Your orator states further that not only has the said State revenue agent inaugurated the proceedings hereinbefore described to collect taxes as aforesaid upon the property that was property of the Natchez, Jackson & Columbus Railroad Company, for the years 1886 to 1891, inclusive, but also the said State revenue agent
35 is now conducting a suit in the chancery court in Hinds county in the State of Mississippi, whereby he demands the payment of taxes upon the same property amounting to about the sum of $125,000 for the years 1892 to 1897 inclusive, in which suit the said State revenue agent is seeking to set aside and disregard the said charter of said railroad company, and the right of said Yazoo & Mississippi Valley Railroad Company thereunder in that particular; furthermore said State revenue agent is also prosecuting in the said chancery court of Hinds county, Mississippi, another suit of similar nature, demanding taxes on account of the property that was the original property of the said Louisville, New Orleans & Texas Railway Company, not including the property of the said Natchez & Jackson Railroad Company as aforesaid, which property came to the said Yazoo & Mississippi Valley Railroad Company by the consolidation of 1892 aforesaid, to the amount of $415,000 for the years 1886 to 1891 inclusive. And furthermore, the said State revenue agent is prosecuting a suit at law in the circuit court of Hinds county, State of Mississippi, for taxes upon the said Louisville, New Orleans & Texas Railway Company's property as last aforesaid, being taxes claimed for the years 1892 to 1897 inclusive, amounting to $548,000. In both of said last-named suits the said State revenue agent, assails, and seeks to set aside the same identical section 21 of the Mobile & Northwestern charter as aforesaid, which by the act of 1882, under which the said Louisville, New Orleans & Texas Railway Company was organized, was incorporated into the charter of said last-named company and became a part thereof.

Your orator states further that if the proceedings which it is herein sought to enjoin should be permitted to continue, and if the said State revenue agent should be allowed to collect said taxes so wrongfully claimed by him for the years 1886 to 1891, inclusive, (which said taxes, your orator protests and states are not owing at all), the effect of such collection will be as follows: that said taxes amounting to about the sum of $60,000 will have to be paid out of the net earnings aforesaid, including the net earnings of the railroad from Natchez to Jackson, and to that extent will reduce those earnings and the earnings of the property derived from the said Louisville, New Orleans & Texas Railway Company in such year or years as said taxes shall be collected and the payment thereof unlawfully compelled, to the great loss and damage of your orator

and of the other holders of said second-mortgage bonds of the Louisville, New Orleans & Texas Railway Company; and also of your orator and of the other holders of said land-grant income bonds of the said Louisville, New Orleans & Texas Railway Company, and
36 in each instance the loss and damage to your orator will be in the proportion of about four-fifths of the whole amount of taxes so collected. And further, if the said revenue agent should prevail in the three suits above mentioned, in addition to the amount of loss and damage hereinbefore just set forth, there will be a further loss and damage inflicted upon your orator and other holders of said second-mortgage and income mortgage bonds, to the amount of $1,080,000 of which, including the amount in the proce-ding herein -ought to be enjoined, $475,000 will be on account of transactions which occurred prior to the purchase of any of said bonds by your orator as aforesaid in the year 1892, and of which your orator purchased, as aforesaid, in entire ignorance of the aforesaid demands now made, and by virtue of a claim which was not presented by the State prior to the purchase aforesaid, and not presented until long after such purchase aforesaid, by retroactive assessments of taxes not warranted by law. And, furthermore, this unjust and inequitable result will be worked out under and pursuant to the revolutionary and subversive decision of the said supreme court of June 20th, 1898, fundamentally altering the established rule of law applicable to the case, so established for more than twenty years as aforesaid.

And your orator says that such collections of said taxes will impair the obligation of your orator's contract of purchase of the said bonds as aforesaid in violation of the protection afforded by the Constitution of the United States; and also will deprive it of its property without due process of law, and will withhold from it the equal protection of the law, in violation of the fourteenth amendment of the said Constitution.

XX.

Your orator further complains, and states that the said Taylor case, mentioned above, was and is *res adjudicata* as between the said Louisville, New Orleans & Texas Railway Company, on the one hand, and the said State of Mississippi on the other, which in said litigation was represented by its authorized tax-collecting officer, as to the question of the legality and sufficiency of the privilege conferred by said section twenty-one, and the constitutionality thereof, and the right of the said Louisville, New Orleans & Texas Railway Company thereunder, and being such *res adjudicata* as between said company and said State, the said Yazoo & Mississippi Valley Railroad Com*a*pny, which is its successor, is entitled to the benefit thereof; and your orator also so entitled, since your orator is protected by all rights and defenses of said Yazoo & Mis-
37 sissippi Valley Railroad Company; and being such *res adjudicata* as against the State of Mississippi, it is also *res adjudicata* as to each and every county and municipality of said State in regard to matters of taxation, such counties and municipalities

having their right to impose taxes only by delegation of such State. And your orator invokes the same as *res adjudicata* accordingly.

XXI.

And your orator further says that the said Lambert case, mentioned above, is also *res adjudicata* as between the Yazoo & Mississippi Valley Railroad Company, which was one of the two complainants in said cause, on the one hand, and the State of Mississippi on the other hand, as to the sufficiency of said privilege conferred by section 21 of the Mobile & Northwestern charter, as imported into the charter of the Natchez, Jackson & Columbus Railroad Company, and its constitutionality; and also in regard to the right of enjoyment thereof of the said Yazoo & Mississippi Valley Railroad Company since the said sale of 1890, and since the said consolidation of 1892; and being such *res adjudicata* in favor of the said Yazoo & Mississippi Valley Railroad Company, your orator is entitled to the protection thereof, since it is entitled to all the protections and defenses of the Yazoo and Mississippi Valley Railroad Company in this proceeding; and since the said decision was *res adjudicata* as against the State of Mississippi, which was represented therein by its legally accredited officer, the tax collector and sheriff of Adams county, it is also *res adjudicata* against each and every county and municipality in said State of Mississippi, which derive their right to impose taxes alone by delegation from said State. Your orator relies upon the same as such *res adjudicata*.

XXII.

And your orator further complains and shows that the State of Mississippi, and the various counties and municipalities in whose behalf the said State revenue agent and said board of railroad commissioners are prosecuting the proceeding herein sought to be enjoined, are estopped by the facts hereinbefore set forth in all their detail, from further proceeding at this date and in the manner above stated, to collect the said taxes hereinbefore pretended to be owing and collectible as stated. Your orator relies upon the same as set forth above as an estoppel against the said State and said counties and the said municipalities, and against the said revenue agent, whose right to proceed is derivative entirely from them.

XXIII.

38 Your orator further complains and states that the assessments of taxes hereinbefore mentioned, when made, as the said railroad commission threatens to make the same, are required by law to be sent down to the clerks of the boards of supervisors of the respective counties, who are required to file the same and preserve the same as a public record, and also to send same to the authorities of each municipality along the line of said railroad in favor of which municipality any assessment shall be made by the said railroad commission; and thereupon, the tax collectors of said counties and said municipalities are required to

proceed to collect the same by seizure of the property of said railroad in the manner prescribed by law, if the same be not voluntarily paid; and the said railroad commission, acting therein, in conformity with their pretended duty, under the law, threaten to certify and send down the said record of assessment, illegal although it be, to the said clerks of the board- of supervisors of the counties of Adams, Jefferson, Claiborne, Copiah and Hinds, and also to the authorities of the various municipalities through which the line of said railroad runs, in order that the same may be proceeded with according to law. Your orator is thereupon threatened with a multiplicity of seizures and suits, brought for the purpose of collecting the said pretended taxes, unlawful although it be.

And the said revenue agent, your orator is informed and believes and charges, threatens in his legal capacity as representative under the law of the State of Mississippi, and of said counties and municipalities to bring a suit for the recovery of the taxes so assessed. Wherefore, your orator says, that for the prevention of multiplicity of suits, this court on its chancery side, should take jurisdiction of the same by its writ of injunction, and adjudicate the matters and questions herein raised, both in the Federal questions, and the questions of *res adjudicata* and estoppel, all as set forth hereinbefore.

XXIV.

Your orator further complains and shows that under and by virtue of the laws of the State of Mississippi, the said assessment when made, whether the same be lawfully made or not, in this particular instance, will constitute a lien upon the railroad property running from the city of Jackson, to the city of Natchez, in said State, preferential in law to all mortgages and other liabilities, and will cast a cloud upon the title to said property to the great injury of your orator, and to the great injury of the holders of the said first-mortgage bonds of the said Natchez, Jackson & Columbus Railroad Company, and of the holders of the said first and
39 second mortgage bonds of the Louisville, New Orleans & Texas Railway Company, of and for which the said Natchez, Jackson & Columbus railroad bonds are collateral. Wherefore this court, proceeding on its chancery side, should take jurisdiction of this cause in order to prevent such cloud being cast upon the title to said property as aforesaid, to the great injury of the parties aforesaid, to the extent of sixty or seventy thousand dollars as aforesaid.

XXV.

Your orator further complains and shows that it cannot even pay this tax under protest, and sue to recover back the taxes, nor can the said Yazoo & Mississippi Valley Railroad Company do so, without being subjected to the burden of a multiplicity of suits as aforesaid. Furthermore, that even if your orator and the said Yazoo & Mississippi Valley were to pay the same under protest, and sue to recover the same back, and should recover judgment for the same,

after undergoing the burden of such multiplicity of litigation, because of the peculiar constitutions of municipalities and counties, it is quite doubtful if the judgments recovered against them could ever practically realize a return of the said taxes, or realize such return without a very great reduction in the practical results because of costs and expenses; and so far as such a suit against the State of Mississippi is concerned, a judgment recovered against said State would doubtless be worthless and of no value, since an execution cannot be had against the same in any form, and it would be purely and wholly optional with the legislature whether it would or would not ever pass a bill of appropriation to return said moneys.

Wherefore your orator and the said Yazoo & Mississippi Valley Railroad Company would be without any effectual remedy at law.

XXVI.

Your orator further complains and shows that it has no complete, nor adequate, nor sufficient remedy in the courts of law, and is relievable only in the courts of equity.

Wherefore, the premises considered, your orator prays that it be permitted to bring this its bill against Wirt Adams, revenue agent, and J. J. Evans, and M. M. Evans, and John D. McInnis, State railroad assessors, and the railroad commission, and against Thomas C. Kimbrough, clerk of said commission, and against the Yazoo & Mississippi Valley Railroad Company, and that subpœnas to answer this bill be issued to the said defendants commanding them to appear, according to the rules of this court, by a day certain and answer the allegations thereof, but not under oath which is expressly waived.

40 Your orator further prays that a writ of injunction issue from this honorable court enjoining and restraining the said defendant- the said railroad assessors aforesaid, from approving, and the said assessors and the clerk aforesaid, from certifying the said assessment of taxes on the said railroad from Natchez to Jackson aforesaid that was formerly the property of the Natchez, Jackson & Columbus Railroad Company, for any of the years 1886 to 1891, both inclusive, to the several counties through or into which the said road passes, or any of them, or to any of the cities or towns along the said line of railroad; and also from approving or certifying said record of assessments and taxation, and from approving and certifying the valuation which they have fixed as such board of assessors aforesaid upon the said Natchez & Jackson railroad; and from certifying their action as said State board of assessors to any county, town, or individual whatever, until the further orders of this court.

And your orator prays that the said Wirt Adams, revenue agent aforesaid shall be enjoined from beginning, by himself, his attorneys, solicitors or agents, or advising or inviting any of the counties, or towns to begin any suit for the recovery of any judgment or decree for said taxes or for the enforcement of the alleged lien for taxes for any of the years mentioned in this bill, and from taking

any proceeding looking to the subjection of the property of your orator, or of the railroad known as the Natchez & Jackson railroad, to the payment of the taxes so claimed as aforesaid for the years 1886 to 1891, both inclusive, or any of them, until the further orders of this court.

And your orator prays that on the final hearing of this cause said injunction may be made perpetual, and that the property of your orator and the said Natchez & Jackson railroad may be adjudged and decreed to be exempt from State and county taxation for the years aforesaid, and that the contract of exemption, as shown by the charter of the said Natchez & Jackson Railroad Company and said section twenty-one of the said Mobile & Northwestern charter as applied thereto by the act of 1870, be declared valid and binding, both as to the State and counties and municipalities therein for the term of thirty years from the date of said charter; and also that the assessment made as aforesaid by the said railroad commission be decreed to be null and void, and the cloud upon the title and right of your orator aforesaid be removed.

And may it please your honors to grant to your orator such other, further and additional relief as in equity it may be entitled to, as under the circumstances are required.

41 This is the first application for a writ of injunction in this case, and as in duty bound, your orator will ever pray.

THE ILLINOIS CENTRAL RAILROAD COMPANY,
By MAYES & HARRIS, *Sol'rs.*
MAYES & HARRIS,
Solicitors for Complainant.

JAMES FENTRESS, *Of Counsel.*

STATE OF MISSISSIPPI, }
County of Hinds. }

Personal- appeared before me the undersigned A. C. Jones, notary public, Edward Mayes, with whom I am personally acquainted, and whom I know to be attorney and solicitor of the Illinois Central Railroad Company, and made oath in due form of law that he is attorney and solicitor for the Illinois Central Railroad Company, and that he has read the foregoing and attached bill of complaint, and that the facts stated therein as of his own knowledge are true, and these stated on information or advice, he believes to be true.

EDWARD MAYES.

Sworn to and subscribed before me this 4th day of August, 1898, as witness my hand and official seal.

A. C. JONES,
[SEAL.] *Notary Public.*

To L. B. Moseley, clerk of the circuit court, southern district of Mississippi:

You will issue the writ of injunction as prayed for in the foregoing bill upon the defendants entering into bond with good and

sufficient securities in the sum of ten thousand dollars, to be approved by you.

August 4th, 1898.

H. C. NILES, *Judge.*

Filed Aug. 5, 1898.

L. B. MOSELEY, *Clerk.*

EXHIBIT A TO O. BILL.

N., J. & C. R. R. Co.
and
L., N. O. & T. R'Y Co.

Conveyance of N., J. & C. R. R.

28 March, 1890.

42 This indenture, made and entered into this the 28th day of March, 1890, by and between the Natchez, Jackson and Columbus Railroad Company of the first part, and the Louisville, New Orleans and Texas Railway Company, of the second part—witnesseth:

That the party of the first part, in consideration of the sum of one hundred and eighty thousand dollars, lawful money of the United States, to it in hand paid by the party of the second part, the receipt whereof is hereby acknowledged has granted, bargained, sold, assigned, transferred and conveyed, and hereby grants, bargains, sells, assigns, transfers and conveys unto the party of the second part, its successors and assigns forever, all the railroad and other property of the party of the first part lying, being and situated in the State of Mississippi, together with all franchises, rights, powers, privileges and immunities unto said party of the first part appertaining or belonging.

To have and to hold to the said party of the second part, its successors and assigns forever, subject, however, to the existing mortgage from the said party of the first part to the Farmers' Loan and Trust Company, trustee, dated September 1st, 1882, securing outstanding bonds of the party of the first part, to the amount of their par face value of not exceeding one million two hundred and fifty thousand dollars, and subject to the current interest thereon.

And in consideration of the premises, the party of the first part has undertaken, covenanted and agreed and hereby undertakes, covenants and agrees to and with the party of the second part to provide for the interest which matured on or prior to March 1, 1890, on bonds secured by the mortgage above referred to, and to provide for the payment of all other unpaid indebtedness and obligations of the party of the first part accruing from and after May 1st, 1889.

In witness whereof, the party of the first part has caused these presents to be executed on its behalf by its president and its cor-

porate seal hereunto affixed and attested by its secretary, the day and year first above written.

NATCHEZ, JACKSON AND COLUMBUS RAILROAD COMPANY,

[SEAL.] By T. J. NICHOLLS, *President.*

JOS. T. PENTON, *Secretary.*

STATE OF MISSISSIPPI, }
Adams County. }

Personally appeared before me, J. Chas. Carson, a justice of the peace, and *ex officio* notary public, in and for the county and
43 State aforesaid, the within-named J. T. Nicholls and Jos. T. Penton, who being by me duly sworn, deposed, say and acknowledge that they signed and delivered the foregoing deed on the day and year therein named, as the act and deed of the Natchez, Jackson and Columbus Railroad Company, the said T. J. Nicholls deposing and acknowledging that he signed and delivered said deed as president of said company, and by the authority of a resolution of the board of directors of said company, and as the secretary of said company, and the said T. J. Nicholls and Jos. T. Penton further depose, say and acknowledge that they know the corporate seal of said Natchez, Jackson and Columbus Railroad Company, and that the seal so affixed to said deed is the seal of the Natchez, Jackson and Columbus Railroad Company, and was so affixed by the order of the board of directors of said company.

In witness whereof, I have hereunto set my hand and affixed my official seal, this 28th day of March, A. D. 1890.

J. CHAS. CARSON,
J. P. and ex Officio Notary Public.

EXHIBIT B TO O. BILL.

Financial Improvement Company and Union Trust Company of New York, trustee.

Collateral trust.

Dated November 1, 1890.

An indenture made and entered into this first day of November, 1890, by and between the Financial Improvement Company, a corporation created, organized, and existing under the laws of the State of Colorado, party of the first part, and the Union Trust Company of New York, a corporation created, organized, and existing under the laws of the State of New York, party of the second part.

Whereas, heretofore and under date of the first day of September, 1882, the Natchez, Jackson, and Columbus Railroad Company executed a certain indenture of mortgage or deed of trust to the Farmers' Loan and Trust Company, of the city of New York,

to secure the payment of an issue of its first-mortgage six per cent bonds, bearing date September 1, 1882, and payable on the first day of September, 1912, which said indenture of mortgage or deed of trust has been duly recorded in the proper counties, and still remains in full force and effect; and

Whereas, the Louisville, New Orleans and Texas Railway
44 Company heretofore, and under date of August 25, 1886, executed an indenture of mortgage or deed of trust to the party of the second part to these presents to secure an issue of the first-mortgage four per cent. gold bonds, bearing date first day of September, 1886, and payable on the first day of September, 1934; and

Wh-reas, the said Louisville, New Orleans and Texas Railway Company, heretofore, and under date of August 26th, 1886, executed a further indenture of mortgage or deed of trust to the party of the second part to these presents securing an issue of its second-mortgage bonds, bearing date the 1st day of September, 1886, and payable on the 1st day of September, 1934; and

Whereas, simultaneously with the execution hereof the party of the first part has deposited with the party of the second part, upon the terms, provisions and conditions hereinafter expressed, first-mortgage bonds of the said Natchez, Jackson and Columbus Railroad Company, issued under and secured by such indenture of mortgage or deed of trust, bearing date the 1st day of September, 1882, to the amount, at their par face value, of one million two hundred and fifty thousand dollars, with coupons appertaining thereto from and including the coupon which matured on the first day of March, 1890:

Now, therefore, this indenture witnesseth, that in consideration of the premises and the mutual undertakings and covenants and agreements hereinafter contained, and of one dollar by each of the parties to these presents to the other in hand paid, the receipt whereof is hereby acknowledged, the parties have undertaken, covenanted and agreed and do hereby undertake, covenant and agree, to and with each other as follows:

First. The said party of the second part will and does hereby accept and receive such first-mortgage bonds of the said Natchez, Jackson and Columbus Railroad Company so deposited with it under this trust.

Second. There shall be forthwith conspiciously stamped across the face of such bonds the words and figures following: "This bond is deposited with the Union Trust Company of New York, or its successors, under and in pursuance of the indenture between the Financial Improvement Company and said trust company, dated November 1, 1890, and subject to all terms, provisions and conditions of the said indenture."

Third. All the first-mortgage six per cent. bonds of the said Natchez, Jackson and Columbus Railroad Company (together with the coupons appertaining thereto) so deposited with said party of the second part, or its successors in this trust, under and in
45 pursuance of this indenture, shall be held by said party of the second part, or its successors in this trust, with all the rights

and privileges in anywise belonging or appertaining to such bonds or coupons, or to the holders thereof, whether in respect to the security afforded by the indenture of mortgage or deed of trust securing the same, or otherwise howsoever, as a trust fund for the benefit and security, in the first instance, of all person- and corporation- who or which may be or become the holders of first-mortgage four per cent. gold bonds of the said Louisville, New Orleans and Texas Railway Company, or its successors, issued under and secured by the deed of trust bearing date the 25th day of August, 1886, hereinbefore referred to, without any preference, priority or advantage in favor of any of the holders of such first-mortgage four per cent. gold bonds over any of the others thereof, and as a security for the payment of the principal and interest of all such first-mortgage four per cent. gold bonds which may be at — time outstanding, and in the second instance, and when the whole of such first-mortgage four per cent. gold bonds shall have been fully paid and discharged, principal and interest, but not otherwise, for the benefit and security of all persons and corporations who or which may be or become the holders of any of the said second-mortgage bonds of said Louisville, New Orleans and Texas Railway Company, or its successors, without any preference, priority or advantage in favor of any of the holders of such second-mortgage bonds over any of the others thereof and as a security for the payment of the principal and interest of all such second-mortgage bonds which may at any time be outstanding.

Fourth. Notwithstanding such deposit of such first-mortgage six per cent. bonds of the said Natchez, Jackson and Columbus Railroad Company, and the coupons appertaining thereto, the same shall remain in all respects in full force and effect as outstanding obligations of said Natchez, Jackson and Columbus Railroad Company, and the liens appertaining thereto under the mortgage by which the same are secured shall continue and be maintained until payment shall have been made by the Louisville, New Orleans and Texas Railway Company, or its successors, of the entire principal and interest of such first-mortgage four per cent. gold bonds, and of such second-mortgage bonds as may have been or may be issued under the indentures of mortgage or deeds of trust in that regard hereinbefore mentioned respectively; and if for any cause the mortgage securing such first-mortgage six per cent. bonds of said Natchez, Jackson and Columbus Railroad Company shall be foreclosed, or if any sale shall be made of the property covered by such mortgage, or any part thereof, which shall in anywise
46 cut off or impair the lien of such mortgage, the said party of the second part, or its successors in this trust, shall be entitled to and shall exercise all the rights, privileges and powers which any other holder of such deposited six per cent. bonds would be entitled to exercise, including the bidding for and purchase of the mortgaged premises, or any part thereof by said party of the second part or its successors in this trust, or by any one by it or them authorized so to bid for and purchase the same on its or their behalf, or for its or their benefit, and including the use of such

bonds or any part thereof to pay for such mortgaged premises, or any part thereof so purchased, subject only in respect to the manner of exercising the same in any such case to the directions of the holders of a majority of such outstanding first-mortgage four per cent. gold bonds, if they should see fit to give such directions.

Fifth. When the principal and interest of all such first-mortgage four per cent. gold bonds and such second-mortgage bonds as shall have been issued under the indentures of mortgage or deeds of trust securing the same respectively as hereinbefore stated, and such costs, charges and expenses as shall have in anywise — incurred in or about the execution of the trust hereby created, shall have been fully paid and satisfied, then the said deposited first-mortgage six per cent. bonds shall be deemed to have been also paid and satisfied, and such deposited bonds shall thereupon be cancelled.

Sixth. In case the said Natchez, Jackson and Columbus Railroad Company, or its successors, should at any time before any default in the payment of the interest on such first-mortgage four per cent. gold bonds, or such second-mortgage bonds of the Louisville, New Orleans and Texas Railway Company or its successors, be desirous of or assent to extending to the first day of September, 1934, the date of the maturity of such deposited first-mortgage six per cent. bonds of said Natchez, Jackson and Columbus Railroad Company, such bonds to bear interest during such extension at the rate of six per cent. per annum payable semi-annually, the party of the second part is authorized and directed to assent to such extension and to the stamping upon each of such deposited first-mortgage bonds of the Natchez, Jackson and Columbus Railroad Company suitable words and figures expressing such extension thereof, provided that in making any such extension it shall be expressly provided by the terms thereof that the same is made without prejudice to the lien of the mortgage securing such six per cent. bonds and that notwithstanding such extension such extended bonds are to re-
47 main secured by the lien of such first mortgage of the Natchez, Jackson and Columbus Railroad Company, with the like effect as the bonds deposited hereunder and now secured thereby, and that such extension is conditional upon the preservation of such lien of the said first mortgage in favor of the bonds as so extended.

Seventh. The said party of the second part shall not, nor shall any of its successors in this trust take any proceedings for or in respect of any default in the payment of any interest obligations upon such deposited first-mortgage six per cent. bonds or take any steps, or request the trustee under the mortgage securing such deposited first-mortgage six per cent. bonds to take any steps for or towards the taking possession or foreclosure or sale under the mortgage securing such deposited bonds, unless or until the holders of one-sixth part of the first-mortgage four per cent. gold bonds of said Louisville, New Orleans and Texas Railway Company or its successors at any time outstanding shall so request, but upon such request, and upon being properly indemnified against the costs to be thereby incurred, the said party of the second part or its suc-

cessors in this trust shall take such steps, or request the trustee under the mortgage securing such deposited bonds to take such steps, for taking possession, foreclosing or selling under such mortgage securing such deposited six per cent. bonds, as may seem to the party of the second part or its successors in this trust to be proper and for the best interest of the holders of the first-mortgage four per cent. gold bonds of the Louisville, New Orleans and Texas Railway Company or its successors for which they are so deposited as security.

Eighth. If default shall be made in the payment of the principal or interest moneys mentioned in the said first-mortgage four per cent. gold bonds of the Louisville, New Orleans and Texas Railway Company or its successors, or any or either of them, or any part thereof, according to the tenor and effect of the said bonds or the coupons appertaining thereto, and such default shall continue for the period of six months, then and in that event the said party of the second part and its successors in this trust, is and are hereby authorized, empowered and directed, at the request of the holders of one-third in amount of the said first-mortgage four per cent. gold bonds then outstanding, to do and cause to be done all such acts and things, and to take and cause to be taken all such steps and proceedings, as the said party of the second part, or its successors, shall be entitled to do or take, or cause to be done or taken, either by itself or themselves, or by any or through the trustees or
48 trustee of the indenture of mortgage or deed of trust securing such first-mortgage six per cent. bonds, for or in respect of any then existing default upon such deposited first-mortgage six per cent. bonds, or the interest obligations thereon, and to do all such acts and take all such steps and proceedings as the said party of the second part, or its successors, by virtue of its or their holding of such deposited first-mortgage six per cent. bonds, and by virtue of the then matured or maturing interest obligations thereon, shall be in anywise authorized or empowered to do or take, either under the mortgage securing such first-mortgage six per cent. bonds, or otherwise howsoever.

And the said party of the second part and its successors are authorized, empowered and directed to do the like acts and take the like steps and proceedings, upon the request of the holders of one-third in amount of such second-mortgage bonds then outstanding, if after payment and satisfaction of such first-mortgage four per cent. bonds there shall exist any default in respect of the payment of the principal of, or any obligations or interest on, the said second-mortgage bonds, or either or any of them or any part thereof.

Ninth. Any and all moneys, choses in action, or other things of value which the said party of the second part, or its successors in this trust, may at any time receive for or on account of any interest obligations on, or obligations for principal of, any of such deposited first-mortgage six per cent. bonds, whether by voluntary payment or delivery or by or through any entry into possession of the mortgaged premises, or any part thereof, under the mortgage securing

such last-mentioned bonds, or any receivership of such mortgaged premises, or any part thereof, or by or through any foreclosure proceedings under said mortgage, or otherwise however, shall be applied, in the first instance to or towards the *pro rata* payment of any interest obligation, or obligations for principal of, such first-mortgage four per cent. bonds, which may then be unpaid; and, in the second instance, after such first-mortgage four per cent. gold bonds shall have been fully paid and satisfied, to or towards the *pro rata* payment of any interest obligations on, or obligation for principal of, such second-mortgage bonds which may then remain unpaid; and so from time to time until the whole of the interest and principal of all such first-mortgage four per cent. gold bonds, and such second-mortgage bonds which may be at any time outstanding, shall have been fully paid, discharged and satisfied; provided, however, that if any such moneys, choses in action or things of value, are received before default in the payment of the principal of, or interest
49 on, such first-mortgage four per cent. gold bonds of the Louisville, New Orleans and Texas Railway Company or its successors; or in any case all such four per cent. bonds shall have been paid off, principal and interest, then before default in the payment of the principal of, or interest on, such second-mortgage bonds, the same shall be held and invested as security for the said first-mortgage four per cent. bonds and second-mortgage bonds of the Louisville, New Orleans and Texas Railway Company or its successors upon the like terms and in the like order as in article third hereof prescribed; and provided, further, that if the said party of the second part or its successors in this trust, by itself or themselves or any one acting for it or them or on it- or their behalf hereunder, should purchase the said mortgaged premises, the same may be by it conveyed to the Louisville, New Orleans and Texas Railway Company or its successors upon said railway company or its successors executing proper mortgages thereon to the trustees under the respective mortgages securing such first mortgage four per cent. gold bonds and such second-mortgage bonds of the Louisville, New Orleans and Texas Railway Company imposing upon such mortgaged premises liens in favor of said first-mortgage four per cent. gold bonds and such second-mortgage bonds respectively of like character and in the like order as are imposed by the mortgages securing such respective classes of bonds upon the premises covered by such mortgages respectively; or may cause such mortgaged premises to be conveyed to an individual or corporation, which shall execute his or its first-mortgage gold bonds, to the amount of not less than one million two hundred and fifty thousand dollars, bearing interest, payable semi-annually, at the rate of six per cent. per annum, and secure the same by first mortgage upon the mortgaged premises so conveyed to him or it, and deposit such bonds so secured with the trustee under this agreement upon the like terms and conditions on which the existing six per cent. bonds of the Natchez, Jackson & Columbus Railroad Company are deposited hereunder.

Tenth. In case of the resignation or insolvency of the party of

the second part, or its successor or successors, or its or their incapacity or inability to act in the execution of this trust, the holders of a majority in interest of such outstanding first-mortgage four per cent. gold bonds, or in case all the said first-mortgage four per cent. bonds should have been paid off, principal and interest, then the holders of a majority in interest of such outstanding second-mortgage bonds may select or designate one or more competent persons, or a corporation, to execute said trust, and the person or persons or corporation so selected shall be thereupon entitled to receive and hold all such deposited first-mortgage six per cent. bonds subject to the trusts herein stated and declared, and shall have all the rights and privileges and be subject to all the duties expressed in this indenture. In case of failure of the bondholders to fill such vacancy in the manner above prescribed, the president for the time being of the Louisville, New Orleans & Texas Railway Company, shall make a temporary appointment for such vacancy, which shall continue until the holders of a majority in interest of said outstanding first-mortgage four per cent. gold bonds, or the holders of a majority in interest of said outstanding second-mortgage bonds shall have designated a new trustee or trustees to act hereunder as hereinbefore prescribed. When the holders of a majority in interest of the said outstanding first-mortgage four per cent. bonds, or in the case above prescribed therefor, the holders of a majority in interest of the said outstanding second mortgage bonds shall, by any instrument in writing, or concurrent instruments in writing, executed by themselves or their attorneys-in-fact, designate a new trustee or new trustees under this indenture, the estates, powers, rights and privileges of any trustee hereunder under any such temporary appointment shall immediately cease and determine, and be transferred to and vest in the new trustee or new trustees so designated and thereupon such new trustee or new trustees shall hold such estates, rights, powers, and privileges with like effect as if he, or they had been designated as the party of the second part hereunder.

Eleventh. Upon the request in writing of the Louisville, New Orleans and Texas Railway Company, or its successors, and of the holders of a majority of all the said first-mortgage four per cent. gold bonds at the time outstanding, or in case all the said first-mortgage four per cent. gold bonds should have been paid off, principal and interest, then upon the request in writing of the Louisville, New Orleans & Texas Railway Company, or its successors, and of the holders of a majority of all the said second-mortgage bonds at the time outstanding, all or any part of the said first-mortgage six per cent. bonds deposited hereunder, together with the coupons appertaining thereto, shall be cancelled; and upon the like request the parties thereto shall have the power to add to, modify or alter the provisions of this trust as they may deem expedient.

Twelfth. Any and all costs, charges and expenses incurred in or in respect of or in connection with the execution of this trust, by or on behalf of the said party of the second part, or its successors in

this trust, or for which the said party of the second part or
51 its successors shall be or become in any way liable or responsible, are to be borne and defrayed by the said Louisville, New Orleans and Texas Railway Company, which, concurrently with the execution hereof, has undertaken and agreed that it will, upon demand, pay any and all such costs, charges and expenses, including therein just and reasonable compensation to said party of the second part, or its successors, for such services, as it or they may be called upon to render in or about or in request of the trust hereby created.

Thirteenth. The party of the second part hereby accepts the trusts created and declared by this indenture, but with the understanding, and it is hereby expressly provided and agreed that it shall not be liable or accountable for the acts, defaults or neglect of any agent or agents who may, in good faith and with reasonable discretion, be appointed under and by virtue of or for the purposes of these presents, to do any of the matters or things herein provided for, and that no other liability or responsibility shall under any circumstances be borne by or attach to it than for the exercise of reasonable diligence only in the performance of said trusts, when action on its part for that purpose shall become necessary.

In witness whereof, the parties hereto have caused their respective corporate seals to be hereunto affixed and attested by their respective presidents and secretaries, the day and year first above written.

FINANCIAL IMPROVEMENT COMPANY,
By I. U. GRAVES, *President.*

Attest: F. H. DAVIS, *Secretary.*

[Seal the Financial Improvement Company, 1882.]

UNION TRUST COMPANY OF NEW YORK,
By EDW'D KING, *President.*

[Seal Union Trust Company of New York, 1864.]

Attest: A. O. RONALDSON, *Secretary.*

Exhibit C to Original Bill.

Articles of Consolidation.

These articles of consolidation, made this 24th day of October, A. D. 1892, by and between the Louisville, New Orleans and Texas Railway Company, a corporation of the States of Tennessee,
52 Mississippi and Louisiana, party of the first part, and the Yazoo and Mississippi Valley Railroad Company, a corporation of the State of Mississippi, party of the second part, witnesseth:

That under and by virtue of the charters of the respective parties hereto and of the laws of the respective States of Tennessee, Mississippi and Louisiana, in such case made and provided, the said parties of the first and second parts have mutually covenanted and agreed and do hereby mutually covenant and agree to and with each other, to unite, merge and consolidate their several capital

stocks, corporate rights, franchises, immunities and privileges and properties of every kind, real, personal and mixed, upon the following terms and conditions, that is to say :

Article I. Such consolidation shall be effected by uniting or merging the stock, property and franchises of the party of the first part with and into the stock, property and franchises of the said The Yazoo and Mississippi Valley Railroad Company, without disturbing the corporate existence of the last-named company, or the formation of any new, distinct, corporation, unless such result shall be necessary to give legal effect to this agreement; but whatever may be the legal consequence of the consolidation herein provided for, this agreement is to stand and be effective.

Article II. The corporate name of the said consolidated company shall be the Yazoo and Mississippi Valley Railroad Company.

Article III. The capital stock of the said consolidated company shall be fifteen million dollars, to be divided into one hundred and fifty thousand shares of one hundred dollars each; but the said corporation may at any time increase or diminish the amount of its capital stock according to law.

Article IV. Every holder of the stock of either of the said companies now outstanding shall be entitled to cast one vote for each share of stock held by him at all stockholders' meetings of the consolidated company, which vote may be cast either in person or by proxy, and shall have all the rights of a stockholder of the consolidated company, as fully as if new shares of the consolidated company had been issued and exchanged therefor; and in case the consolidated company shall determine to issue *merging the*
53 *stock, property and franchises of the party of the* now outstanding shares of each of the constituent companies; and the remainder of the capital stock of the consolidated company shall be issued from time to time, and upon such terms and conditions as may be prescribed by the board of directors of said company.

Article V. All and singular the rights, powers, privileges, immunities and franchises, and all the railroads, real and personal estate, easements, fixtures, equipments, choses in action and property and assets of every kind, nature or description, belonging to either of the parties hereto, shall be vested in, and become the property of, the said consolidated company, without any further act, deed, conveyance or assurance being required in the premises.

Article VI. The affairs of the consolidated company shall be managed by a board of directors, which shall consist of such a number of members, not less than five, as the company may determine from time to time, each of whom shall be a stockholder, and one of them a resident of the State of Mississippi, one of Tennessee and one of Louisiana. The members shall be divided into three equal classes as nearly as practicable. Successors, to serve for the term of three years, shall be chosen for those who belong to the first class at the first annual meeting of the stockholders held after this consolidation shall have been effected; for those who belong

to the second class, at the next annual meeting; and for those belonging to the third class at the next succeeding annual meeting of the stockholders. Each director successively chosen shall continue in office until his successor is elected. Vacancies in the board, caused otherwise than by expiration of the term for which the retiring director was chosen, may be filled by a vote of a majority of the directors remaining, such appointee to continue in office until the next regular election of directors by the stockholders.

The first board of directors shall be composed of the following members, divided into three classes as follows?

First class. Stuyvesant Fish, Adolphe Schreiber, W. C. Craig, Charles A. Peabody, Jr.

Second class. John W. Auchincloss, Walther Luttgen, Edward H. Harriman, J. T. Harrahan.

Third class. S. V. R. Cruger, R. P. Neeley, R. C. Shepherd, John C. Welling.

54 Article VII. The board of directors of said consolidated company shall choose one of their number president, whose term of office shall be one year, or until his successor shall be chosen and qualified. They may also appoint such other officers and agents as they may deem necessary from time to time, and prescribe their duties and compensation; and may provide, by the by-laws to be adopted, such rules and regulations relating to the affairs and business of said company as may be necessary or proper. The said board shall also have power to appoint an executive committee, of whom the president shall be one *ex officio*, who shall possess and exercise all the powers and duties of the board of directors when the board is not in session. Until otherwise ordered, the corporate seal of the said consolidated company shall be that of the Yazoo and Mississippi Valley Railroad Company.

Article VIII. The said consolidated company shall be, and the same is hereby authorized and empowered, in such manner and upon such conditions as are permitted by law, to issue its bonds and to secure the same, as well as all bonds heretofore issued by either of the constituent companies, or that have been heretofore or may be hereafter issued by any other railroad company, by mortgage or deed of trust upon all or any of its railroads, rights, franchises and property, real or personal, wherever the same may be situated, and whether the same may be owned by said company at the time this consolidation is effected or may be thereafter acquired; and may also exercise any and every other corporate right or power now vested in, or which might have been heretofore lawfully exercised by, either of said constituent companies.

Article IX. Until otherwise ordered the domicile of the said corporation, under the laws of the State of Louisiana, shall be in the parish of Orleans; and, under the laws of the State of Mississippi, in the city of Jackson, in Hinds county; and the general domicile of the corporation shall be at Memphis, in the State of Tennessee.

Article X. The provisions of these articles shall be obligatory upon the successors and assigns of the respective parties hereto and

shall become operative and of force from and after the 25th day of October, A. D. 1892.

In witness whereof, the parties hereto have caused their corporate names to be hereto subscribed by their respective presidents,
55 and their corporate seals to be affixed and attested by their respective secretaries, on the day and year first above written.

LOUISVILLE, NEW ORLEANS AND TEXAS RAILWAY COMPANY,
By RICHARD T. WILSON, *President.*

[SEAL.]
Attest: CHARLES H. BOSHER, *Secretary.*

THE YAZOO AND MISSISSIPPI VALLEY RAILROAD COMPANY,
By STUYVESANT FISH, *President.*

[SEAL.]
Attest: ALEXANDER G. HACKSTAFF, *Secretary.*

As to the Louisville, New Orleans and Texas Railway Company, Witness:

S. TOWNSEND.
J. F. VAN NAME.
GEORGE H. TAYLOR.

As to the Yazoo and Mississippi Valley Railroad Company, Witness:

W. E. RUTTAN,
CHAS. H. WENMAN, AND
GEORGE H. TAYLOR.

STATE OF NEW YORK, }
City and County of New York, } *ss:*

Be it remembered that, on this twenty-fourth day of October, A. D. 1892, before me, George H. Taylor, a duly appointed notary public in and for the city and county of New York, State of New York, and commissioner for the State of Tennessee in and for the State of New York, residing in said city and county of New York, personally appeared Richard T. Wilson, president of the Louisville, New Orleans and Texas Railway Company, and Charles H. Bosher, secretary of the same company, to me personally known and known to me to be such officers of said company, who, being by me severally duly sworn, did depose and say: That the said Richard T. Wilson was the president and the said Charles H. Bosher was the secretary of the said company; that they knew the corporate seal of said company; that the seal affixed to the foregoing instrument was such corporate seal, and that it was so affixed thereto by order of the board of directors of said company; and that they, the said Richard T. Wilson and Charles H. Bosher, signed their names thereto by like order as president and secretary of said company respectively.

56 In witness whereof, I have hereunto set my hand and affixed my official seals this twenty-fourth day of October, A. D. 1892.

[SEAL.] GEORGE H. TAYLOR,
Commissioner for Tennessee in New York
[SEAL.] *and Notary Public N. Y. County.*

STATE OF NEW YORK, }
City and County of New York, } ss:

Be it remembered that, on this twenty-fourth day of October, A. D. 1892, before me, George H. Taylor, a duly appointed notary public in and for the city and county of New York, State of New York, and commissioner for the State of Mississippi in and for the State of New York, residing in said city and county of New York, personally appeared Richard T. Wilson, president of the Louisville, New Orleans and Texas Railway Company, and Charles H. Bosher, secretary of the same company, to me personally known and known to me to be such officers of said company, who being by me severally duly sworn, did depose and say: That the said Richard T. Wilson was the president and the said Charles H. Bosher was the secretary of the said company; that they knew the corporate seal of said company; that the seal affixed to the foregoing instrument was such corporate seal, and that it was so affixed thereto by order of the board of directors of said company; and that they, the said Richard T. Wilson and Charles H. Bosher, signed their names thereto by like order as president and secretary of said company respectively.

In witness whereof, I have hereunto set my hand and affixed my official seals this twenty-fourth day of October, A. D. 1892.

[SEAL.] GEORGE H. TAYLOR,
Commissioner for Mississippi in New York
[SEAL.] *and Notary Public N. Y. County.*

STATE OF NEW YORK, }
City and County of New York, } ss:

Be it remembered, that on this twenty-fourth day of October, A. D. 1892, before me, George H. Taylor, a duly appointed notary public in and for the city and county of New York, State of New York, and commissioner for the State of Louisiana, in and for the State of New York, residing in said city and county of New York, personally appeared Richard T. Wilson, president of the Louisville,
57 New Orleans and Texas Railway Company, and Charles H. Bosher, secretary of the same company, to me personally known, and known to me to be such officers of said company, who, being by me severally duly sworn, did depose and say: That the said Richard T. Wilson was the president, and the said Charles H. Bosher was the secretary of the said company; that they knew the corporate seal of said company; that the seal affixed to the foregoing instrument was such corporate seal, and that it was so affixed thereto by order of the board of directors of said company, and that they, the said Richard T. Wilson and Charles H. Bosher,

signed their names thereto by like order as president and secretary of said company respectively.

In witness whereof, I have hereunto set my hand and affixed my official seals this twenty-fourth day of October, A. D. 1892.

[SEAL.] GEORGE H. TAYLOR,
Commissioner for Louisiana in New York
[SEAL.] *and Notary Public N. Y. County.*

STATE OF NEW YORK, }
City and County of New York, } ss:

Be it remembered that, on the twenty-fourth day of October, A. D. 1892, before me, George H. Taylor, a duly appointed notary public in and for the city and county of New York, State of New York, and commissioner for the State of Tennessee, in and for the State of New York, residing in said city and county of New York, personally appeared Stuyvesant Fish, president of the Yazoo and Mississippi Valley Railroad Company, and Alexander G. Hackstaff, secretary of the same company, to me personally known and known to me to be such officers of said company, who being by me severally duly sworn, did depose and say: That he, the said Stuyvesant Fish, was the president, and that he, the said Alexander G. Hackstaff, was the secretary of the said company; that they knew the corporate seal of said company; that the seal affixed to the foregoing instrument was such corporate seal, and that it was so affixed thereto by order of the board of directors of said company; and that they, the said Stuyvesant Fish and Alexander G. Hackstaff, signed their names thereto by the like order as president and secretary of said company respectively.

In witness whereof, I have hereunto set my hand and affixed my official seals this twenty-fourth day of October, A. D. 1892.

[SEAL.] GEORGE H. TAYLOR,
Commissioner for Tennessee in New York
[SEAL.] *and Notary Public N. Y. County.*

58 STATE OF NEW YORK, }
City and County of New York, } ss:

Be it remembered that, on the twenty-fourth day of October, A. D. 1892, before me, George H. Taylor, a duly appointed notary public in and for the city and county of New York, State of New York, and commissioner for the State of Mississippi in and for the State of New York, residing in said city and county of New York, personally appeared Stuyvesant Fish, president of the Yazoo and Mississippi Valley Railroad Company, and Alexander G. Hackstaff, secretary of the same company, to me personally known and known to me to be such officers of said company, who being by me severally duly sworn, did depose and say: That he, the said Stuyvesant Fish, was the president, and that he, the said Alexander G. Hackstaff, was the secretary of the said company; that they knew the corporate seal of said company; that the seal affixed to the foregoing instrument was such corporate seal, and that it was so affixed

thereto by order of the board of directors of said company; and that they, the said Stuyvesant Fish and Alexander G. Hackstaff, signed their names thereto by the like order as president and secretary of said company, respectively.

In witness whereof, I have hereunto set my hand and affixed my official seals this twenty-fourth day of October, A. D. 1892.

[SEAL.] GEORGE H. TAYLOR,
Commissioner for Mississippi in New York,
[SEAL.] *and Notary Public N. Y. County.*

STATE OF NEW YORK, }
City and County of New York, } *ss:*

Be it remembered that, on the twenty-fourth day of October, A. D. 1892, before me, George H. Taylor, a duly appointed notary public in and for the city and county of New York, State of New York, and commissioner for the State of Louisiana in and for the State of New York, residing in said city and county of New York, personally appeared Stuyvesant Fish, president of the Yazoo and Mississippi Valley Railroad Company, and Alexander G. Hackstaff, secretary of the same company, to me personally known and known to me to be such officers of said company, who being by me severally duly sworn, did depose and say: That he, the said Stuyvesant Fish, was the president, and that he, the said Alexander G. Hackstaff, was the secretary of the said company; that they know the
59 corporate seal of said company; that the seal affixed to the foregoing instrument was such corporate seal, and that it was so affixed thereto by order of the board of directors of said company; and that they, the said Stuyvesant Fish and Alexander G. Hackstaff, signed their names thereto by the like order as president and secretary of said company respectively.

In witness whereof, I have hereunto set my hand affixed my official seals this twenty-fourth day of October, A. D. 1892.

[SEAL.] GEORGE H. TAYOR,
Commissioner for Louisiana in New York,
[SEAL.] *and Notary Public N. Y. County.*

EXHIBIT D TO O. BILL.

JACKSON, MISSISSIPPI, *Dec.* 31, 1897.

To the railroad commissioners of the State of Mississippi, Jackson, Mississippi.

GENTLEMEN: Please take notice that the following-described property in said State, viz: the Natchez, Jackson & Columbus Railroad Company and the Louisville, New Orleans and Texas Railway Company and the Yazoo & Mississippi Valley Railroad Company, the property of said companies being that railroad between the cities of Natchez and Jackson in said State, known as the Natchez, Jackson & Columbus railroad, has escaped taxation during the years 1886, 1887, 1888, 1889, 1890, and 1891, because of not being assessed heretofore:

By virtue of an act of the legislature of said State, approved February 7th, 1894, entitled "An act to provide for the election of a State revenue agent, to prescribe his powers and duties and to repeal sections 4187, 4190, 4191, 4192, 4193 and 4195, chapter 126 of the Annot-ed Code of 1892," I now hereby respectfully notify you, within ten days hereafter, to make the proper assessment of said property by way of an additional assessment, or at as early a date as possible, consistent with the requirements of the law, on the rolls or tax-list in your hands, and to give ten days', or longer, notice in writing, to the Yazoo & Mississippi Valley Railroad Company, and the Natchez, Jackson & Columbus Railroad Company, whose company and property is so assessed, and herein fail not under the penalties imposed by said act.

Witness my signature this December 31st, 1897.

WIRT ADAMS,
State Revenue Agent.

60 EXHIBIT E TO O. BILL.

An indenture made the twenty-fifth day of August, in the year of our Lord one thousand eight hundred and eighty-six, by and between the Louisville, New Orleans and Texas Railway Company, a corporation created, organized, and existing under the laws of the States of Tennessee, Mississippi, and Louisiana, party of the first part, and the Union Trust Company of New York, a corporation created, organized, and existing under the laws of the State of New York, party of the second part.

Whereas, the party of the first part has been formed by the consolidation under the laws of the States of Tennessee, Mississippi and Louisiana, of the Tennessee Southern Railroad Company, a corporation created and existing under the laws of the State of Tennessee, the New Orleans, Baton Rouge, Vicksburg and Memphis Railroad Company, and the Memphis and Vicksburg Railroad Company, corporations created and existing under the laws of the State of Mississippi, and the New Orleans and Mississippi Valley Railroad Company, a corporation created and existing under the laws of the State of Louisiana, and is the owner of a line of railway extending from Memphis, in the State of Tennessee, to New Orleans, in the State of Louisiana, and is authorized to construct branches thereto.

And whereas, the party of the first part and its successors are about to execute and issue, from time to time, but with the limitations hereinafter prescribed in respect to the aggregate amount thereof which may at any time be outstanding, which amount is not in any case to exceed, at the par or face value of such bonds, the sum of sixteen million nine hundred thousand dollars, first-mortgage bonds for one thousand dollars each of the general form and tenor following, to wit:

UNITED STATES OF AMERICA.

Louisville, New Orleans and Texas Railway Company.

No. —. *First-mortgage Gold Bond.* No. —.

The Louisville, New Orleans and Texas Railway Company, for value received, promises to pay to the bearer hereof, or, if registered to the registered holder hereof, the sum of one thousand dollars on the first day of September, 1934, and, on presentation and surrender at or after maturity of the respective interest warrants hereunto annexed, to pay to the person presenting the same, or, if this bond is registered and the interest warrants appertaining thereto
61 canceled, to pay to the registered holder hereof, interest on such principal sum at the rate of four per centum per annum, semi-annually, on or after the first day of March and September in each year, such payments of principal and interest to be made at the office or agency of said company in the city of New York, in United States gold coin.

This is one of the first-mortgage bonds of said railway company, secured by a deed of trust to the Union Trust Company of New York, trustee, dated August 25, 1886.

None of said bonds are to be in anywise binding or obligatory unless authenticated by a certificate indorsed thereon, signed by said trustee or its successor or successors in said trust.

This bond may at any time, upon production thereof to said railway company and proper indorsement being made thereon, and either with or without the surrender to said railway company for cancellation of all unpaid interest warrants appertaining thereto, be registered upon the books of the company in the name of the holder thereof, and thereupon its transferability by delivery will cease, and thereafter it can be transferred only by the registered holder or his attorney by transfer duly made upon said books.

In witness whereof, the said railway company has caused these presents to be signed by its president, and its corporate seal to be affixed thereto and attested by its secretary, this first day of September, one thousand eight hundred and eighty-six.

LOUISVILLE, NEW ORLEANS AND TEXAS RAILWAY COMPANY,

By —— ——, *President.*

[SEAL.]

Attest: —— ——, *Secretary.*

And whereas, the general form of the several interest warrants to be annexed to such bonds (each of which interest warrants is to bear the engraved signature of the treasurer of the railway company) is to be as follows, viz:

(*Form of Interest Warrant.*)

Interest warrant for twenty dollars gold, being semi-annual interest maturing on the first day of — upon the Louisville, New Orleans and Texas Railway Company's first-mortgage bond No. —.

$20. —— ——, *Treasurer.*

And whereas, all of the said bonds are to be equally secured by mortgage and hypothecation of the railways and railway lines of the party of the first part, and its successors constructed and
62 to be constructed or acquired until the length of such railways shall amount, in the aggregate, to eight hundred miles, and of all their appurtenances, and the franchises relating or pertaining thereto.

Now therefore this indenture witnesseth, that the party of the first part, in consideration of the premises, and of one dollar to it paid by the party of the second part, the receipt whereof is hereby acknowledged, and for the purpose of securing the payment of such bonds, with the interest to accrue thereon, according to the true intent and meaning thereof, hath granted, bargained, sold, aliened, remised, released, conveyed and confirmed. and by these presents doth grant, bargain, sell, alien, remise, release, convey and confirm unto the said party of the second part, and its successors and assigns forever, all the railways and railway lines of the party of the first part, and its successors, whether constructed or to be constructed or acquired, until the length of such railways shall amount in the aggregate to eight hundred miles, and all their appurtenances, including therein all lands and rights of way, superstructure, rails, tracks, side tracks or sidings, bridges, buildings, fences, depots, station-houses, shops, warehouses, car-houses, engine-houses, machine shops, repair shops, buildings, erections and structures necessary to the operation of said railways or said railway lines, and all and singular the rolling stock, equipment and machinery appertaining thereto, whether now owned or hereafter to be acquired; and also, all the rents, issues, tolls, incomes, earnings and profits of such railways and railway lines; and also, all the rights, privileges, immunities and franchises relating or pertaining to such railways or railway lines which the said party of the first part now possesses, owns or is entitled unto, or it or its successors may hereafter become possessed of or entitled unto; and also, all the estate, right, title, interest, property, possession, claim and demand whatsoever, as well in law as in equity, of the said party of the first part, and its successors, of, in and to the premises, and every part and parcel thereof, with the appurtenances.

To have and to hold, all and singular the above mentioned and described premises, together with the appurtenances, unto the said party of the second part, and its successors and assigns forever, in trust, nevertheless, for the security and benefit of all and every the persons or bodies corporate who or which shall be or at any time become the holder or holders of any such bonds, or the interest warrants appertaining thereto without preference to the holder of any of said bonds or interest warrants over any of the others, by reason of priority in the date thereof or the time of the issuing or negotiation of the same.

63 Provided always, and these presents are upon the express condition, that if the party of the first part, or its successors or assigns, shall well and truly pay or cause to be paid to the holders of the said bonds and interest warrants, when and as the same shall

become due and payable, the principal and interest moneys secured hereby, according to the terms, provisions and conditions, tenor and effect of the said bonds, then these presents and the estate hereby granted shall cease, determine and be null and void.

And it is covenanted and agreed by and between the parties hereto, that until default shall be made by the said party of the first part, its successors and assigns, in the payment of the principal or interest of the said bonds, or some of them, or some part thereof, the said party of the first part, its successors and assigns, shall be suffered and permitted to possess and enjoy the said premises, with their appurtenances, and all and singular the rights and franchises hereinbefore described, and to receive, take and use the tolls, income, earnings and profits thereof, and the trustee or trustees hereunder shall have full power in its or their discretion, upon written request of the party of the first part, its successors or assigns, to convey, by way of release or otherwise, and fully release from the lien of this mortgage, any lands or other property of any description which in its or their judgment shall not be necessary for, or for use in connection with, said railways, and to consent to such changes in the location of tracks, depots and other buildings as in its or their judgment may be expedient, and to make and deliver the releases and conveyances necessary to carry the same into effect, but any lands or other property which may be acquired for permanent use in substitution for any so released or conveyed shall thereupon become subject to the lien of this mortgage, and upon request of the trustee or trustees hereunder shall be conveyed to it or them by the party of the first part, its successors or assigns, upon the trusts of these presents.

But if default shall be made in the payment of the principal or interest moneys mentioned in the said bonds, or any or either of them, or any part thereof, according to the tenor and effect of said bonds, or either of them, and if such default shall continue for the period of six months, then, and in that case, the party of the second part, or its successors in the trust, are hereby authorized and empowered, at the request of the holders of one-fourth part of the said bonds then outstanding in respect of which such default shall have been made, to enter into and upon, and take and hold possession of, all and singular the premises, estates, franchises, rights, privileges and property hereby granted and conveyed, or intended so
64 to be, and in person, or by one or more agents to operate the said railway to make from time to time all such repairs and replacements as it or they may deem judicious, and all such useful alterations, additions and improvements as the income coming into its or their hands shall be adequate to pay for, and to make, collect and receive all fares, freights, tolls, earnings, issues, profits and income of said railways, and apply such fares, freights, tolls, earnings, issues, profits and income to the proper expenses of holding, operating and managing the said railways and other premises, and conducting the business thereof, to the payment of and for all taxes and assessments which shall be levied or assessed thereon, and all necessary and proper repairs, replacements, alterations, additions

and improvements upon said property, and all expenses, costs, charges and counsel fees in the premises of said party of the second part, or its successors in the trust, and a reasonable compensation for its or their services, and next to the payment of the interest and principal of the said bonds, according to the tenor and effect thereof, as the same may be or become due and payable, and in case the principal moneys secured by such bonds shall not have become due, the moneys applicable to the payment of interest shall be applied upon the interest warrants remaining in default, in the order of their maturity; in case the said principal moneys shall have become due, the moneys applicable to the payment of the principal and interest on such bonds shall be applied to such principal — interest *pro rata* without any preference or priority whatsoever.

And further, if default shall be made in the payment of the principal or interest moneys mentioned in the said bonds, or any or either of them, or any part thereof, and if such default shall continue for the period of six months, then, and in that case, at the request of the holders of one-fourth part of the said bonds then outstanding in respect of which such default shall have been made, the said party of the second part, or its successors in the said trust, may, and it and they are hereby authorized and empowered to, cause the whole of the said premises, estates, franchises, rights, privileges and property hereby granted and conveyed, or intended so to be, with their appurtenances, and all benefit and equity of redemption of the said party of the first part, and its successors and assigns therein or thereto, to be sold at public auction in the city of New York, in the State of New York, or the city of Memphis, in the State of Tennessee, giving at least three months' previous notice of the time and place of such sale, by publishing the same at least once in each week during such period of three months, in two newspapers published in said city of New York and two newspapers published in said city of Memphis, and giving such other
65 notice of such sale as may be required by law, if any other notice be so required.

And it shall be lawful for the said party of the second part or its successors making such sale, and it and they are hereby authorized and empowered, as the attorney or attorneys of the party of the first part, and its successors, by these presents duly constituted and appointed for that purpose, to make, execute and deliver to the purchaser or purchasers on such sale, all such deeds and conveyances as shall be necessary or proper to convey and assure to, and vest in, him or them, the said premises, estates, franchises, rights, privileges and property and every part and parcel thereof, and all of the estate, right, title and interest of the said party of the first part, and its successors and assigns therein or thereto; and such sale, and the deeds and conveyances so to be thereupon executed, shall be valid and effectual forever, and shall be a perpetual bar, both in law and equity, against the said party of the first part and its successors and assigns, and against all persons claiming or to claim by, from or under it or them, or any of them.

And it is further declared and agreed, that the receipt of the

trustee or trustees who shall make the sale hereinbefore authorized shall be a sufficient discharge to the purchaser or purchasers at such sale for his or their purchase-money, and that such purchaser or purchasers, his or their heirs or assigns or personal representatives, shall not, after paying such purchase-money and receiving such receipt of such trustee or trustees therefor, be obliged to see to the application of such purchase-money upon or for the trusts or purposes of these presents, or be in anywise answerable for any loss, misapplication or non-application of such purchase-money by the trustee or trustees.

And it is hereby declared and agreed, that the said party of the second part, or its successors in the said trust, shall out of the proceeds of such sale, or of any sale which shall, under judicial proceedings or otherwise, be made of the said premises in inforcement of the security afforded by these presents, in the first place, pay and retain the costs and expenses attending such sale, and all counsel fees and other expenses incurred by it or them in reference to the same, and a reasonable compensation for its or their own services in the premises; and also any balance which may be due to it or them on account of any disbursements or expenses paid or incurred in or about the care and management of the said premises subsequent to the taking possession thereof by it or them, including the reasonable compensation of any agent or agents who may be employed in or about such care and management, and shall apply the residue of the proceeds of such sale, or so much thereof as
66 may be necessary to the payment of the whole amount of principal and interest which shall then be owing and unpaid upon the bonds secured hereby, or any of them, whether the said principal, by the tenor of the said bonds, be then due or yet to become due. And in case of a deficiency of such proceeds to pay in full the whole amount of principal and interest owing or unpaid upon the said bonds, they shall be paid ratably in proportion to the amounts owing and unpaid upon them respectively, and without discrimination as between principal and interest, and with preference of the holder of any one bond or interest warrant over any of the others; and any surplus which may remain after the full payment of the principal and interest of all of the said bonds shall be paid over to the said party of the first part, or its successors or assigns, upon lawful demand being made therefor.

And it is hereby further provided, declared, granted and agreed, that upon the happening of such event or events as is or are hereinbefore declared, agreed or provided to authorize the said party of the second part, or its successors, to sell the said premises, estates, franchises, rights, privileges and property, or to take the requisite proceedings to that end, the said party of the second part, or its successors, shall be entitled, in its or their discretion, instead of taking proceedings for and making sale of said premises, estates, franchises, rights, privileges and property, under and in virtue of the power of sale hereinbefore contained, to proceed by bill in equity, or other appropriate proceedings in any court or courts of competent jurisdiction to foreclose this mortgage or inforce the rights, liens and

securities of the trustee or trustees and the bondholders thereunder; and thereupon said trustee or trustees shall be entitled to have the said premises, estates, franchises rights privileges and property hereby granted or conveyed or intended so to be sold by judicial sale under the order or decree of such court or courts, for or towards the satisfaction of the principal and interest due or owing upon the then outstanding bonds, issued under or entitled to the benefit of the security of this mortgage, and for the inforcement of the rights, liens and securities of the trustee or trustees and the bondholders; and in case of such judicial sale, the net proceeds thereof shall be applicable and distributable in like manner as hereinbefore provided in respect of the net proceeds of sale of such mortgaged premises and properties, rights and franchises, under and in virtue of the power of sale hereinbefore contained; and all the stipulations and provisions in this indenture contained with reference to or consequent upon a sale of such mortgaged premises and properties, rights, immunities and franchises, when or if sold under said power of sale,
shall be applicable and applied as far and as nearly as may
67 be, in case of such judicial sale being made under the order or decree of the court.

And it is hereby further provided, declared and agreed that in case of such sale as is hereinbefore authorized being made by the party of the second part or its successors in said trust, or in case of any judicial sale being made of the said premises, properties, rights and franchises hereby mortgaged, or any part thereof in inforcement of the mortgage lien hereby created, the purchaser or purchasers at such sale shall be entitled, in making settlement for and payment of the purchase-money bidden at such sale, to turn in or use towards the payment of such purchase-money the bonds held by such purchaser or purchasers, to or towards the payment whereof the net proceeds of such sale shall be legally applicable, reckoning such bonds, or the amount so turned in or used of the same for such purpose, at such sum as would be payable out of the net proceeds of such sale to such purchaser or purchasers, as holder or holders of such bonds, for his or their just share or proportion of such net proceeds of sale, upon due apportionment of and concerning such net proceeds.

And the said party of the first part, for itself, its successors and assigns, doth hereby covenant, grant and agree to and with the said party of the second part and its successors in the trust, and to and with the respective persons and corporations who or which shall at any time become holders of the said bonds hereby secured, or any of them, that the said party of ~~the first part~~, its successors and assigns, shall and will at any time and from time to time hereafter, upon request, made, do, execute and deliver all such further and other acts, deeds and things as shall be reasonably advised, devised or required to effectuate the intention of these presents, and to assume and confirm to the said party of the second part, or its successors, all and singular the property and estate, real and personal, hereinbefore described, and hereby intended to be granted, and so as to render the same, and especially such portions thereof as shall be

hereafter acquired by the said party of the first part, or its successors, available for the security and satisfaction of the said bonds, according to the intent and purpose herein expressed.

And it is hereby further provided, covenanted, declared and agreed that the party of the second part and its successors in the trust hereby created are forthwith, upon the request of the party of the first part, its successors or assigns, to authenticate and certify as issued hereunder and to deliver to the party of the first part, its successors or assigns, bonds of said party of the first part or its successors of the general form and tenor above set forth, to the amount of ten million dollars, and thereafter from time to time to
68 authenticate and certify as issued hereunder and to deliver to the party of the first part, its successors or assigns, such bonds, to amounts which shall aggregate twenty thousand dollars for each mile of constructed railway (not included in the main line of railway of the party of the first part from Memphis to New Orleans), which may be certified to the party of the second part or its successors in this trust, as hereinafter provided, to be then owned by the party of the first part, or its successors, and mortgaged hereby, or by indenture of mortgage or deed of trust supplemental hereto constituting a first mortgage thereon, until the length of such railways, including such main line, shall amount in the aggregate to eight hundred miles: and that the certificate of the president of said party of the first part or its successors to the facts entitling the party of the first part or its successors to receive such bonds under the foregoing clause hereof, shall be sufficient evidence of such facts and shall fully protect the said party of the second part or its successors in respect to the authentication, certification and delivery of said bonds; but it is expressly provided, declared, covenanted and agreed that the said party of the second part and its successors in the trust created hereby shall not, in any event in addition to the bonds to the amouut of ten million dollars to be forthwith issued hereunder in respect of main line, authenticate or certify, as issued hereunder, bonds in excess of twenty thousand dollars for each mile of railway so certified to be constructed, owned and mortgaged but not to be included in such main line. Provided, however, that nothing herein contained shall prevent the party of the second part and its successors from authenticating, certifying and delivering to said party of the first part, its successors or assigns, bonds in excess of the limits above prescribed (but not in any case exceeding in the aggregate the amount at their par or face value of sixteen million nine hundred thousand dollars, in case the proceeds of the sale of such bonds issued in excess of such limits shall simultaneously with the delivery of such bonds to the party of the first part, its successors or assigns, to be deposited with the trustee or trustees hereunder, to be delivered to the party of the first part, its successors or assigns, only from time to time, as and when, under the foregoing provisions hereof, it or they would have become entitled to receive the bonds represented by such deposited proceeds, and until such delivery of such proceeds to said party of the first part, its successors or assigns,

the same shall be held by the said trustee or trustees, as further collateral security to all the bonds outstanding hereunder.

And it is hereby further provided, declared and agreed, that any vacancy in the office of trustee hereunder may be permanently filled by the appointment of a new trustee or new trustees,
69 by an instrument or concurrent instruments in writing, executed under the hands and seals of the holders of a majority in interest of the then outstanding bonds secured hereby, or their attorneys-in-fact thereunto authorized, but that the board of directors of the party of the first part or its successors may make a temporary appointment to fill such vacancy until a permanent appointment shall be made in the manner above prescribed.

And it is hereby covenanted and agreed, that any new trustee or new trustees, appointed as aforesaid, whether by a permanent or temporary appointment shall immediately upon its, his or their appointment, and without any further act, deed or conveyance, become and be vested with all of the estates, trusts, rights, powers and duties of the trustee or trustees in whose place it, he or they shall have been appointed; but, nevertheless, the respective parties hereto and their respective successors and assigns, shall and will, upon request, make, execute and deliver all such releases, conveyances and assurances as shall be appropriate to vest in and confirm and assure to such new trustee or new trustees such estates, trusts, rights, powers and duties, according to the intent above expressed.

And the said party of the second part does hereby accept the trust conferred upon it by these presents, but with the understanding, and it is hereby expressly provided and agreed, that it shall not be liable or accountable for the acts, defaults or neglects of any agent or agents who may, in good faith and with reasonable discretion, be appointed under and by virtue of or for the purposes of these presents to do any of the matters or things herein provided for, and that no other liability or responsibility shall, under any circumstances, be borne by or attach to it than for the exercise of reasonable diligence only in the performance of the said trusts, when action on its part for that purpose shall become necessary. The party of the second part is to be entitled to compensation for services in the execution of this trust.

In witness whereof, the parties hereto have caused their respective corporate seals to be hereunto affixed and attested by their respective secretaries, and these presents to be signed by their respective presidents the day and year first above written.

LOUISVILLE, NEW ORLEANS AND TEXAS RAILWAY COMPANY,
By R. T. WILSON, *President.*

[Corporate Seal.]

Attest: C. H. BOSHER, *Secretary.*

UNION TRUST COMPANY OF NEW YORK,
By EDW'D KING, *Pres't.*

[Corporate Seal.]

Attest: JAS. H. OGILVIE, *Sec'ty P. T.*

70 STATE OF NEW YORK, } ss:
City and County of New York, }

Be it remembered that on this twenty-fifth day of August, in the year of our Lord one thousand eight hundred and eighty-six, before me, William Shillaber, a duly appointed notary public in and for the city and county of New York, State of New York, and commissioner for the State of Tennessee, in and for the State of New York, residing in said city and county of New York, personally appeared Richard T. Wilson, president of the Louisville, New Orleans and Texas R'y Company, and Charles H. Bosher, secretary of the same company, to me respectively personally known and known to me to be such officers of the said company, who, being by me severally duly sworn, did depose and say: That he, said Richard T. Wilson, resides in the city of New York, in the State of New York, and that he, said Charles H. Bosher, resides in the city of New York, in the State of New York; that he, said Richard T. Wilson, is the president, and he, said Charles H. Bosher, is the secretary, of the said company; that they know the corporate seal of said company; that the seal affixed to the foregoing instrument is such corporate seal, and that it was so affixed thereto by order of the board of directors of the said company, and that they, the said Richard T. Wilson and Charles H. Bosher, signed their names thereto by the like order as president and secretary of said company respectively.

In witness whereof I have hereunto set my hand and affixed my official seal this 25th day of August, one thousand eight hundred and eighty-six.

[NOTARIAL SEAL.] WILLIAM SHILLABER,
Notary Public, City and County of New York,
Commissioner for the State of Tennessee.

[COMMISSIONER'S SEAL.]

STATE OF NEW YORK, } ss:
City and County of New York, }

Be it remembered that on this twenty-fifth day of August, in the year of our Lord one thousand eight hundred and eighty-six, before me, William Shillaber, a duly appointed notary public in and for the city and county of New York, State of New York, and commissioner for the State of Tennessee, in and for the State of New York, residing in said city and county of New York, personally appeared
71 Edward King, president of the Union Trust Company of New York, and James H. Ogilvie, secretary *pro tem.* of the same company, to me respectively personally known and known to me to be such officers of the said company, who, being by me severally duly sworn, did depose and say: That he, said Edward King, resides in the city of New York, in the State of New York; and that he, said James H. Ogilvie, resides in said city of New York, in the State of New York; that he, said Edward King, is the

president, and he, said James H. Ogilvie, is the secretary *pro tem.*, of the said company; that they know the corporate seal of said company; that the seal affixed to the foregoing instrument is such corporate seal, and that it was so affixed thereto by authority of the board of trustees of the said company, and that they, the said Edward King and James H. Ogilvie, signed their names thereto by the like authority as president and secretary *pro tem.* of said company respectively.

In witness whereof I have hereunto set my hand and affixed my official seal this 25th day of August, one thousand eight hundred and eighty-six.

[NOTARIAL SEAL.] WILLIAM SHILLABER,
Notary Public, City and County of New York,
Commissioner for the State of Mississippi.

[COMMISSIONER'S SEAL.]

STATE OF NEW YORK, }
City and County of New York, } *ss.:*

Be it remembered that on this twenty-fifth day of August, in the year of our Lord one thousand eight hundred and eighty-six, before me, William Shillaber, a duly appointed notary public in and for the city and county of New York, State of New York, and commissioner for the State of Mississippi, in and for the State of New York, residing in said city and county of New York, personally appeared the within-named Richard T. Wilson, president of the Louisville, New Orleans and Texas Railway Company, and Charles H. Bosher, secretary of the same company, to me respectively personally known and known to me to be such officers of the said company, who acknowledged that in pursuance of authority in them vested by the board of directors of said company, and as such president and secretary, they signed and delivered the foregoing instrument and affixed thereto the corporate seal of said company on the day and year therein mentioned.

In witness whereof I have hereunto set my hand and
72 affixed my official seal this 25th day of August, one thousand eight hundred and eighty-six.

[NOTARIAL SEAL.] WILLIAM SHILLABER,
Notary Public, City and County of New York,
Commissioner for the State of Mississippi.

[COMMISSIONER'S SEAL.]

STATE OF NEW YORK, }
City and County of New York, } *ss.:*

Be it remembered that on this twenty-fifth day of August, in the year of our Lord one thousand eight hundred and eighty-six before me, William Shillaber, a duly appointed notary public, in and for the city and county of New York, State of New York, and commissioner for the State of Mississippi in and for the State of New

York, residing in said city and county of New York, personally appeared Edward King, president of the Union Trust Company of New York, and James H. Ogilvie, secretary *pro tem.* of the same company, to me respectively personally known, and known to me to be such officers of said company, who acknowledged to me that in pursuance of authority in them vested by the board of trustees of said company, and as such president and secretary *pro tem.* they signed and delivered the foregoing instrument, and affixed thereto the corporate seal of said company, on the day and year therein mentioned, for the purposes therein expressed.

In witness whereof, I have hereunto set my hand and affixed my official seal, this 25th day of August, one thousand eight hundred and eighty-six.

[NOTARIAL SEAL.] WILLIAM SHILLABER,
Notary Public, City and County of New York,
Commissioner for the State of Mississippi.

[COMMISSIONER'S SEAL.]

STATE OF NEW YORK, }
City and County of New York, } *ss:*

Be it remembered that on this twenty-fifth day of August, in the year of our Lord one thousand eight hundred and eighty-six before me, William Shillaber, a duly appointed notary public, in and for the city and county of New York, State of New York, and commissioner for the State of Louisiana, in and for the State of New York, residing in said city and county of New York, personally appeared
Richard Thornton Wilson, president of the Louisville, New
73 Orleans and Texas Railway Company, and Charles H. Bosher,
secretary of the same company, to me respectively personally known and known to me to be such officers of the said company, and to be the same persons described in and who executed the foregoing instrument in my presence and in that of the two witnesses whose names are thereto subscribed as such, who being by me severally duly sworn, did depose and say: That he, said Richard Thornton Wilson, resides in the city of New York, in the State of New York, and that he, said Charles H. Bosher, resides in the city of New York, in the State of New York; that he, said Richard Thornton Wilson, is the president, and he, said Charles H. Bosher, is the secretary of the said company; that they know the corporate seal of said company; that the seal affixed to the foregoing instrument is such corporate seal, and that it was so affixed thereto by order of the board of directors of the said company, and that they, the said Richard Thornton Wilson and Charles H. Bosher, signed their names thereto by the like order as president and secretary of said company respectively, and thereupon acknowledged that they had signed, sealed and delivered such instrument as the voluntary act and deed of said company, and as their own voluntary act and deed, for the considerations, uses and purposes therein expressed.

In witness whereof, I have hereunto set my hand and affixed my

official seal, this 25th day of August, one thousand eight hundred and eighty-six.

R. T. WILSON.
C. H. BOSHER.

Witnesses:
CHARLES H. TWEED.
J. F. C. GROW.

[NOTARIAL SEAL.] WILLIAM SHILLABER,
Notary Public, City and County of New York,
Commissioner for the State of Louisiana.

[COMMISSIONER'S SEAL.]

STATE OF NEW YORK, } ss:
City and County of New York, }

Be it remembered, that on this twenty-fifth day of August, in the year of our Lord one thousand eight hundred and eighty-six, before me, William Shillaber, a duly appointed notary public in and for the city and county of New York, State of New York, and commissioner for the State of Louisiana, in and for the State of New York, residing in said city and county of New York, per-
74 sonally appeared Edward King, president of the Union Trust Company of New York, to me personally known, and known to be the president of the said company, and to be the same person described in and who executed the foregoing instrument in my presence and in that of the two witnesses whose names are thereto subscribed as such, who being by me duly sworn, did depose and say: That he resides in the city of New York, in the State of New York, and is the president of the said company; that he knows the corporate seal of said company; that the seal affixed to the foregoing instrument is such corporate seal, and that it was so affixed thereto by authority of the board of trustees of the said company, and that he signed his name thereto by the like authority as president of said company, and the said King thereupon acknowledged that he had signed, sealed and delivered the said instrument as the voluntary act and deed of said company, and as his own voluntary act and deed for the considerations, uses and purposes therein expressed.

In witness whereof, I have hereunto set my hand and affixed my official seal, this 25th day of August, one thousand eight hundred and eighty-six.

EDW'D KING.

Witnesses:
R. C. McGILL.
A. H. ALVORD.

]NOTARIAL SEAL.] WILLIAM SHILLABER,
Notary Public, City and County of New York,
Commissioner for the State of Louisiana.

[COMMISSIONER'S SEAL.]

Exhibit F to O. Bill.

An indenture made the twenty-sixth day of August, in the year of our Lord one thousand eight hundred and eighty-six, by and between the Louisville, New Orleans and Texas Railway Company, a corporation created, organized, and existing under the laws of the States of Tennessee, Mississippi, and Louisiana, party of the first part, and the Union Trust Company of New York, a corporation created, organized, and existing under the laws of the State of New York, party of the second part.

Whereas, the party of the first part has been formed by the consolidation, under the laws of the State of Tennessee, Mississippi and Louisiana, of the Tennessee Southern Railroad Company a corporation created and existing under the laws of the State of Tennessee,
75 the New Orleans, Baton Rouge, Vicksburg and Memphis Railroad Company, and the Memphis and Vicksburg Railroad Company, corporations created and existing under the laws of the State of Mississippi, and the New Orleans and Mississippi Valley Railroad Company, a corporation created and existing under the laws of the State of Louisiana, and is the owner of a line of railway extending from Memphis, in the State of Tennessee, to New Orleans, in the State of Louisiana, and is authorized to construct branches thereto.

And whereas, the party of the first part and its successors are about to execute and issue, to the amounts hereinafter prescribed on that behalf, second-mortgage bonds for one thousand dollars each, of the general form and tenor following, to wit:

United States of America.

Louisville, New Orleans and Texas Railway Company.

No. —. *Second-mortgage Bonds.*

The Louisville, New Orleans and Texas Railway Company, for value received, promises to pay, at its agency in the city of New York, to the bearer hereof, or, if registered, to the registered owner hereof, one thousand dollars, on the first day of September, one thousand nine hundred and thirty-four, and also in the meantime, on the first day of March and September in each year after the year 1888, to pay, at such agency on presentation of this bond for indorsement of such payment thereon, such interest on such principal sum, not exceeding five per centum per annum payable semi-annually, from the 1st day of September, 1888, and interest on interest in arrears, as the net earnings of said railway company shall suffice to pay on the entire issue of which this bond is one, after making such deductions from the said net earnings as are provided for in the mortgage or deed of trust securing the same hereinafter referred to.

This bond is one of a series of second-mortgage bonds of like tenor and amount numbered consecutively from 1 upward, which are secured by a mortgage or deed of trust made by the said railway

company to the United Trust Company of New York, as trustee, dated August 26, 1886, and are subordinate in lien to the first-mortgage four per cent. gold bonds of said railway company or its successors, issued or to be issued under indenture of mortgage or deed of trust, dated August 25, 1886. Each successive holder of this bond accepts the same subject to the terms, conditions and limitations expressed in said mortgage or deed of trust securing the same, and waives all right of action hereon except in accordance therewith.

76 The interest on this bond shall be payable only out of the net earnings of the said railway company, after making the deductions therefrom provided for in the said mortgage or deed of trust securing the same, and shall not be due at any time during the currency of this bond, until the amount payable in respect thereof shall have been determined and declared by the board of directors of said railway company.

But such interest shall be cumulative, and in case less than two and a half per centum be paid in any half year, the unpaid interest, with interest on such unpaid interest at the rate of five per centum per annum, shall be carried forward to the credit of this bond, for subsequent payment as such net earnings after such deductions shall suffice therefor, or at the maturity of the bond. All arrears of such interest, with the accrued interest thereon (so far as the same shall not have been previously paid), shall be paid with the principal of this bond, on the 1st day of September, 1934, and no dividend shall be paid upon the stock of the company or its income bonds until interest hereon, calculated at the rate of five per centum per annum from the 1st day of September, 1888, and payable semi-annually, together with the accrued interest on any arrears of such interest shall have been fully paid.

It is further provided that the railway company or its successors may, at its or their option, at any time after two years from the date hereof, pay and extinguish such whole issue of second-mortgage bonds upon giving thirty days' notice in such manner as is prescribed in such mortgage or deed of trust securing the same, of its election to pay off such bonds at a prescribed date and place, and in case the said company shall at such prescribed date and place pay or be ready to pay the face of said bonds with five per cent premium thereon, and such interest as up to that date may have been earned and become due on said bonds according to the terms thereof, and may remain unpaid, the said bonds shall thereupon cease to bear interest.

This bond shall pass by delivery unless registered. After registration, certified hereon by the company's transfer agent, no transfer, except upon the company's books, shall be valid, unless the last registration shall have been to bearer.

This bond shall not be valid or obligatory until the certificate authenticating the same and indorsed hereon shall have been signed by the trustee hereunder.

In witness whereof, the said railway company has caused its corporate seal to be hereto affixed and attested by its secretary and

these presents to be assigned by its president, the first day of September, one thousand eight hundred and eighty-six.

77 And whereas, all of the said second-mortgage bonds are to be equally secured by mortgage and hypothecation of the railways and railway lines of the party of the first part and its successors, constructed or to be constructed or acquired until the length of such railways shall amount, in the aggregate, to eight hundred miles, and of all their appurtenances, and the franchises relating or pertaining thereto.

Now therefore this indenture witnesseth, that the party of the first part, in consideration of the premises, and of one dollar to it paid by the party of the second part, the receipt whereof is hereby acknowledged, and for the purpose of securing the payment of such second-mortgage bonds, with the interest to accrue thereon, according to the true intent and meaning thereof, hath granted, bargained, sold, aliened, remised, released, conveyed and confirmed, and by these presents doth grant, bargain, sell, alien, remise, release, convey and confirm unto the said party of the second part, and its successors and assigns forever, all the railways and railway lines of the party of the first part and its successors, whether constructed or to be constructed or acquired, until the length of such railways shall amount in the aggregate to eight hundred miles, and all their appurtenances, including therein all lands and rights of way, superstructure, rails, tracks, side tracks or sidings, bridges, buildings, fences, depots, station-houses, shops, warehouses, car-houses, engine-houses, machine shops, repair shops, buildings, erections and structures necessary to the operations of said railways or said railway lines, and all and singular the rolling stock, equipment and machinery appertaining thereto, whether now owned or hereafter to be acquired; and also, all rents, issues, tolls, incomes, earnings and profits of such railways and railway lines; and also, the rights, privileges, immunities and franchises relating or pertaining to such railways or railway lines which the said party of the first part now possesses, owns or is entitled unto, or it or its successors may hereafter become possessed of or entitled unto; and also, all the estate, right, title, interest, property, possession, claim and demand whatsoever, as well in law as in equity, of the said party of the first part and its successors, of, in and to the premises, and every part and parcel thereof, with the appurtenances.

To have and to hold, all and singular the above mentioned and described premises, together with the appurtenances, unto the said party of the second part, and its successors and assigns forever, in trust, nevertheless for the security and benefit of all and every the persons or bodies corporate who or which shall be or at any time become the holder or holders of any such second-mortgage
78 bonds, without preference to the holder of any of the said bonds over any of the others, by reason of priority in the date thereof or the time of the issuing or negotiating of the same, but subject at all times to the lien of the mortgage or deed of trust from said party of the first part to the party of the second part,

dated Aug. 25, 1886, securing the first-mortgage four per cent. gold bonds of said party of the first part or its successors, as thereby appears.

Provided always, and these presents are upon the express condition, that if the party of the first part, or its successors or assigns shall well and truly pay or cause to be paid to the holders of the said second-mortgage bonds when and as the same shall become due and payable, the principal and interest moneys secured hereby, according to the terms, provisions and conditions, tenor and effect of the said bonds, then these presents and the estate hereby granted shall cease, determine and be null and void.

And it is covenanted and agreed by and between the parties hereto, that until default shall be made by the said party of the first part, its successors and assigns, in payment of the principal or interest of the said bonds, of some of them, or some part thereof, the said party of the first part, its successors and assigns, shall be suffered and permitted to possess and enjoy the said premises with their appurtenance-, and all and singular the rights and franchises hereinbefore described, and to receive, take and use the tolls, income, earnings and profits thereof, and the trustee or trustees hereunder shall have full power, in its or their discretion, upon written request of the party of the first part, its successors or assigns, to convey, by way of release or otherwise, and fully release from the lien of this mortgage, any land or other property of any description which in its or their judgment shall not be necessary for, or for use in connection with, said railways, and to consent to such changes in the location of tracks, depots and other buildings as in its or their judgment may be expedient, and to make and deliver the releases and conveyances *are* necessary to carry the same into effect, but any lands or other property which may be acquired for permanent use in substitution for any so released or conveyed shall thereupon become subject to the lien of this mortgage, and upon the request of the trustee or trustees hereunder shall be conveyed to it or them by the party of the first part, its successors or assigns, upon the trusts of these presents.

But if default shall be made in the payment of the principal or interest moneys mentioned in the said bonds, or any or either of them, or any part thereof, according to the tenor and effect of said bonds, or either of them, and if such default shall continue for the period of six months, then, and in that case, the party of
79 the second part, or its successors in the trust, are hereby authorized and empowered, at the request of the holders of one-fourth part of the said bonds then outstanding in respect of which such default shall have been made, to enter into and upon, and take and hold possession of, all and singular the premises, estates, franchises, rights, privileges and property hereby granted and conveyed, or intended so to be, and in person, or by one or more agents to operate the said railways, to make from time to time all such repairs and replacements as it or they may deem judicious, and all such useful alterations, additions and improvements as the income coming into its or their hands shall be adequate to pay for,

and to take, collect and receive all fares, freights, tolls, earnings, issues, profits and income of said railways and apply such fares, freights, tolls, earnings, issues, profits and income to the proper expenses of holding, operating and managing the said railways and other premises, and conducting the business thereof, to the payment of and for all taxes and assessments which shall be levied or assessed thereon, and all necessary and proper repairs, replacements, alterations, additions and improvements upon said property, and all expenses, costs, charges and counsel fees in the premises of said party of the second part, or its successors in the trust, and a reasonable compensation for its or their services, and next to the payment of the interest and principal of the said bonds, according to the tenor and effect thereof, as the same may be or become due and payable, and in case the principal moneys secured by such bonds shall not have become due, the moneys applicable to the payment of interest shall be applied upon the interest remaining in default, in the order of its maturity; in case the said principal moneys shall have become due, the moneys applicable to the payment of the principal and interest on such bonds shall be applied to such principal and interest *pro rata* without any preference or priority whatsoever.

And further, if default shall be made in the payment of the principal or interest moneys mentioned in the said bonds, or any or either of them, or any part thereof, and if such default shall continue for the period of six months, then, and in that case, at the request of the holders of one-fourth part of the said bonds then outstanding in respect of which such default shall have been made, the said party of the second part, or its successors in the said trust, may, and it and they are hereby authorized and empowered to, cause the whole of the said premises, estates, franchises, rights, privileges and property hereby granted and conveyed, or intended so to be, with their appurtenances, and all the benefit — equity of redemption of the said party of the first part, and its successors and as-
80 signs therein or thereto, to be sold at public auction in the city of New York, in the State of New York, or the city of Memphis, in the State of Tennessee, giving at least three months' previous notice of the time and place of such sale, by publishing the same at least once in each week during such period of three months, in two newspapers published in said city of New York, and two newspapers published in said city of Memphis, and giving such other notice of such sale as may be required by law, if any other notice be so required.

And it shall be lawful for the said party of the second part or its successors making such sale, and it and they are hereby authorized and empowered, as the attorney or attorneys of the party of the first part, and its successors, by these presents duly constituted and appointed for that purpose, to make, execute and deliver to the purchaser or purchasers on such sale, all such deeds and conveyances as shall be necessary or proper to convey and assure to, and vest in, him or them, the said premises, estates, franchises, rights, privileges and property, and every part and parcel thereof, and all of the estate, right, title and interest of said party of the first part, and i-s succes-

sors and assigns therein or thereto; and such sale, and the deeds and conveyances so to be thereupon executed, shall be valid and effectual forever, and shall be a perpetual bar, both in law and equity, against the said party of the first part and its successors and assigns, and against all persons claiming or to claim by, from or under it or them, or any of them.

And it is further declared and agreed, that the receipt of the trustee or trustees who shall make the sale hereinbefore authorized shall be sufficient discharge to the purchaser or purchasers at such sale for his or their purchase-money, and that such purchaser or purchasers, his or their heirs or assigns or personal representatives, shall not, after paying such purchase-money and receiving such receipt of such trustee or trustees therefor, be obliged to see the application of such purchase-money upon or for the trusts or purposes of these presents, or be in anywise answerable for any loss, misapplication or non-application of such purchase-money by the trustee or trustees.

And it is hereby declared and agreed, that the said party of the second part, or its successors in the said trust, shall out of the proceeds of said sale, or of any sale which shall under judicial proceedings or otherwise, be made of the said premises in enforcement of the security afforded by these presents, in the first place, pay and retain the costs and expenses attending such sale, and all counsel fees and other expenses incurred by it or them in reference to the same, and a reasonable compensation for its or their own
81 services in the premises; and also any balance which may be due to it or them on account of any disbursements or expenses paid or incurred in or about the care and management of the said premises subsequent to the taking possession thereof by it or them, including the reasonable compensation of any agent or agents who may be employed in or about such care and management, and shall apply the residue of the proceeds of such sale, or so much thereof as may be necessary to the payment of the whole amount of principal and interest which shall then be owing and unpaid upon the bonds secured hereby, or any of them, whether the said principal, by the tenor of the said bonds, be then due or yet to become due; and in case of a deficiency of such proceeds to pay in full the amount of principal and interest owing or unpaid upon the said bonds, they shall be paid ratably in proportion to the amount owing and unpaid upon them respectively, and without discrimination as between principal and interest, and without preference of the holder of any one bond over any of the others; and any surplus which may remain after the full payment of the principal and interest of all of the said bonds shall be paid over to the said party of the first part, or its successors or assigns, upon lawful demand being made therefor.

And it is hereby further provided, declared, granted and agreed, that upon the happening of such event or events as is or are hereinbefore declared agreed or provided to authorize the said party of the second part, or its successors, to sell the said premises, estates, franchises, rights, privileges and property, or to take the requisite

proceedings to that end, the said party of the second part, or its successors, shall be entitled, in its or their discretion, instead of taking proceedings for and making sale of said premises, estates, franchises, rights, privileges, and property, under and by virtue of the power of sale hereinbefore contained, to proceed by bill in equity, or other appropriate proceedings, in any court or courts of competent jurisdiction, to foreclose this mortgage or enforce the rights, liens and securities of the trustee or trustees and the bondholders thereunder; and thereupon said trustee or trustees shall be entitled to have the said premises, estates, franchises, rights, privileges and property hereby granted or conveyed or intended so to be, sold by judicial sale under the order or decree of such court or courts, for or towards the satisfaction of the principal and interest due or owing upon the then outstanding second-mortgage bonds, issued under or entitled to the benefit of the security of this mortgage, and for the enforcements of the rights, liens and securities of the trustee or trustees and the bondholders; and in case of such judicial sale, the net proceeds thereof shall be applicable and distributable in like
82 manner as hereinbefore provided in respect of the net proceeds of sale of such mortgaged premises and properties, rights and franchises, under and in virtue of the power of sale hereinbefore contained; and all the stipulations and provisions in this indenture contained with reference to or consequent upon a sale of such mortgaged premises and properties, rights, immunities and franchises, when or if sold under said power of sale, shall be applicable and applied as far and as nearly as may be, in case of such judicial sale being made under the order or decree of the court.

And it is hereby further provided, declared and agreed that in case of such sale as is hereinbefore authorized being made by the party of the second part or its successors in said trust, or in case of any judicial sale being made of the said premises, properties, rights and franchises hereby mortgaged, or any part thereof in inforcement of the mortgage lien hereby created, the purchaser or purchasers at such sale shall be entitled, in making settlement for and payment of the purchase-money bidden at such sale, to turn in or use towards the payment of such purchase-money the bonds held by such purchaser or purchasers, to or towards the payment whereof the net proceeds of such sale shall be legally applicable, reckoning such bonds, or the amount so turned in or used of the same for such purchase, at such sum as would be payable out of the net proceeds of such sale to such purchaser or purchasers, as holder or holders of such bonds, for his or their just share or proportion of such net proceeds of sale, upon due apportionment of and concerning such net proceeds.

And the said party of the first part, for itself, its successors and assigns, doth hereby covenant, grant and agree to and with the said party of the second part, and its successors in the trust, and to and with respective persons and corporations who or which shall at any time become holders of the said bonds hereby secured, or any of them, that the said party of the first part, its successors and assigns, shall and will at any time and from time to time hereafter, upon

request, make, do, execute and deliver all such further and other acts, deeds and things as shall be reasonably advised, devised or required to effectuate the intention of these presents, and to assure and confirm to the said party of the second part, or its successors, all and singular the property and estate, real and personal, hereinbefore described, and hereby intended to be granted and so far as to render the same, and especially such portions thereof as shall be hereafter acquired by the said party of the first part, or its successors, available for the security and satisfaction of the said bonds, according to the intent and purpose herein expressed.

And it is hereby further provided, covenanted, declared and agreed that the party of the second part and its successors in the trust hereby created are forthwith, upon the request of the party
83 of the first part, its successors or assigns, to authenticate and certify as issued hereunder and to deliver to the party of the first part, its successors or assigns, bonds of said party of the first part or its successors of the general form and tenor above set forth, to the amount of seven million eight hundred and ninety-nine thousand dollars, and that hereafter, from time to time, when and as it shall be certified to the party of the second part or its successors in this trust as hereinafter provided that any additional railway, not included in the present main line of the railway of the party of the first part from Memphis to New Orleans, has been constructed or acquired by said party of the first part or its successors, and has become subject to this mortgage or to any supplemental mortgage subjecting the same to a lien in favor of the second mortgage bonds issued hereunder, the said party of the second part and its successors in the trust hereby and as it shall be certified to the party of the second part or its successors, to authenticate and certify as issued hereunder and deliver to the party of the first part or its successors such additional amounts of such second-mortgage bonds (bearing interest to the like extent with the other second-mortgage bonds of this issue then outstanding), as shall justly represent the capitalization into said bonds, of the difference between five per cent. interest, payable semi-annually, and four per cent. interest payable semi-annually, for the remainder of the term of said bonds, upon twenty thousand dollars for each mile of such additional road. Provided that no such additional bonds shall be issued hereunder in respect of such additional railroad when the length of such railroads in respect of which such bonds shall have been issued together with the main line above referred to, shall amount in the aggregate to eight hundred miles; and that the certificate of the president of said party of the first part or its successors to the facts, entitling the party of the first part or its successors to receive such additional bonds, under the foregoing clause hereof, shall be sufficient evidence of such facts, and shall fully protect the said party of the second part or its successors in respect to the authentication, certification and delivery of such bonds.

It is hereby further provided, covenanted, declared and agreed that the amount which shall be appropriated and applied to or towards the payment of interest on such second-mortgage bonds

each six months during the currency of such bonds, shall be ascertained by the board of directors of the party of the first part of its successors, by deducting from the earnings and income of said company from such railways, the expenses of operating said railways and the keeping up and maintaining the same, with their appurtenances, and of all improvements, additions, betterments, renewals and acquisitions, and of providing and keeping
84 up suitable equipment and the expenses of conducting the said company's business and affairs, and maintaining its corporate organization, and the interest payable each six months upon the first-mortgaged four per cent. gold bonds of the said railway company or its successors, issued under or secured by the indenture of mortgage or deed of trust from said railway company to the Union Trust Company of New York, dated August 25, 1886, and that such amounts so remaining after such deductings shall be distributed and applied *pro rata* among the holders or registered owners of the second-mortgage bonds secured hereby from time to time outstanding. Provided, however, that the amounts so from time to time distributed, shall not in the aggregate exceed five per cent. per annum, from the first day of September, 1888, payable semi-annually, and interest which may have accrued upon the arrears of interest remaining at any time, or from time to time, unpaid.

And it is further provided, covenanted, declared and agreed that the said party of the first part or its successors may at its or their option at any time after two years from September 1, 1886, pay and extinguish such whole issue of second-mortgage bonds secured by this indenture upon giving 30 days' notice by publication twice a week in two newspapers of good circulation in the city of New York, of its election to pay off the same at a prescribed date and place, and in case the said company shall at such prescribed date and place pay or be ready to pay the face of said bonds with five per cent. premium thereon, and such interest as up to that date may have been earned and become due on said bonds according to the terms thereof and may remain unpaid, the said bonds shall thereupon cease to bear interest.

And it is hereby further provided, declared and agreed, that any vacancy in the office of trustee hereunder may be permanently filled by the appointment of a new trustee or new trustees, by an instrument or concurrent instruments in writing, executed under the hands and seals of the holders of a majority in interest of the then outstanding bonds secured hereby or their attorneys-in-fact thereunto authorized, but that the board of directors of the party of the first part or its successors may make a temporary appointment to fill such vacancy until a permanent appointment shall be made in the manner above prescribed.

And it is hereby covenanted and agreed, that any new trustee or new trustees, appointed as aforesaid, whether by a permanent or temporary appointment, shall immediately upon its, his or their appointment, and without any further act, deed or conveyance, be-

come and be vested with all of the estates, trusts, rights, powers
85 and duties of the trustee or trustees in whose place it, he or
they shall have been appointed; but nevertheless, the respective parties thereto, and their respective successors and assigns, shall and will, upon request, make, execute and deliver all such releases, conveyances and assurances as shall be appropriate to vest in and confirm and assure to such new trustee or new trustees such estates, trusts, rights, powers and duties, according to the intent above expressed.

And the said party of the second part does hereby accept the trust conferred upon it by these presents, but with the understanding, and it is hereby expressly provided and agreed, that it shall not be liable or accountable for the acts, defaults or neglect of any agent or agents who may, in good faith and with reasonable discretion, be appointed under and by virtue of or for the purposes of these presents to do any of the matters or things herein provided for, and that no other liability or responsibility shall, under any circumstances, be borne by or attach to it than for the exercise of reasonable diligence only in the performance of the said trusts, when action on its part for that purpose shall become necessary. The party of the second part is to be entitled to compensation for services in the execution of this trust.

In witness whereof, the parties hereto have caused their respective corporate seals to be hereunto affixed and attested by their respective secretaries, and these presents to be signed by their respective presidents the day and year first above written.

LOUISVILLE, NEW ORLEANS & TEXAS RAILWAY COMPANY,
By R. T. WILSON, *President.*

[CORPORATE SEAL.]
Attest: C. H. BOSHER, *Secretary.*

UNION TRUST COMPANY OF NEW YORK,
By EDW'D KING, *President.*

[CORPORATE SEAL.]
Attest: JAS. H. OGILVIE, *Secretary P. T.*

STATE OF NEW YORK, }
City and County of New York, } ss:

Be it remembered, that on this twenty-sixth day of August, in the year of our Lord one thousand eight hundred and eighty-six, before me, William Shillaber, a duly appointed notary public in and for the city and county of New York, State of New York, and commissioner for the State of Tennessee, in and for the State of
86 New York, residing in said city and county of New York,
personally appeared Richard T. Wilson, president of the Louisville, New Orleans and Texas Railway Company, and Charles H. Bosher, secretary of the same company, to me respectively personally known, and known to me to be such officers of the said

company, who being by me severally duly sworn, did depose and say: That he, said Richard T. Wilson, resides in the city of New York, in the State of New York, and that he, said Charles H. Bosher, resides in the city of New York, in the State of New York; that he, said Richard T. Wilson, is the president, and he, said Charles H. Bosher, is the secretary of the said company; that they know the corporate seal of said company; that the seal affixed to the foregoing instrument is such corporate seal, and that it was so affixed thereto by order of the board of directors of the said company, and that they, the said Richard T. Wilson and Charles H. Bosher, signed their names thereto by the like order as president and secretary of said company respectively.

In witness whereof I have hereunto set my hand and affixed my official seal this 26th day of August, one thousand eight hundred and eighty-six.

[NOTARIAL SEAL.] WILLIAM SHILLABER,
Notary Public, City and County of New York.
Commissioner for the State of Tennessee.

[COMMISSIONER'S SEAL.]

STATE OF NEW YORK, }
City and County of New York, } *ss:*

Be it remembered that on this twenty-sixth day of August, in the year of our Lord one thousand eight hundred and eighty-six, before me, William Shillaber, a duly appointed notary public in and for the city and county of New York, State of New York, and commissioner for the State of Tennessee, in and for the State of New York, residing in said city and county of New York, personally appeared Edward King, president of the Union Trust Company of New York, and James H. Ogilvie, secretary *pro tem.* of the same company, to me respectively personally known, and known to me to be such officers of the said company, who being by me severally duly sworn, did depose and say: That he, said Edward King, resides in the city of New York, in the State of New York; and that he said James H. Ogilvie, resides in said city of New York, in the State of New York; that he, said Edward King, is the president, and he, said James H. Ogilvie, is the secretary *pro tem.* of the said company; that they know the corporate seal of said company; that the seal affixed
87 to the foregoing instrument is such corporate seal, and that it was so affixed thereto by authority of the board of trustees of the said company, and that they, the said Edward King and James H. Ogilvie, signed their names thereto by the like authority as president and secretary *pro tem.* of said company, respectively.

In witness whereof I have hereunto set my hand and affixed my official seal this 26th day of August, one thousand eight hundred and eighty-six.

[NOTARIAL SEAL.] WILLIAM SHILLABER,
Notary Public, City and County of New York,
Commissioner for the State of Tennessee.

[COMMISSIONER'S SEAL.]

STATE OF NEW YORK, }
City and County of New York, } ss:

Be it remembered that on this twenty-sixth day of August, in the year of our Lord one thousand eight hundred and eighty-six, before me, William Shillaber, a duly appointed notary public, in and for the city and county of New York, State of New York and commissioner for the State of Mississippi, in and for the State of New York residing in said city and county of New York, personally appeared the within-named Richard T. Wilson, president of the Louisville, New Orleans and Texas Railway Company, and Charles H. Bosher, secretary of the same company, to me respectively personally known, and known to me to be such officers of the said company, who acknowledged that in pursuance of authority in them vested by the board of directors of said company, and as such president and secretary they signed and delivered the foregoing instrument, and affixed thereto the corporate seal of said company, on the day and year therein mentioned.

In witness whereof I have hereunto set my hand and affixed my official seal this 26th day of August, one thousand eight hundred and eighty-six.

[NOTARIAL SEAL.] WILLIAM SHILLABER,
Notary Public, City and County of New York,
Commissioner for the State of Tennessee.

[COMMISSIONER'S SEAL.]

STATE OF NEW YORK, }
City and County of New York, } ss:

Be it remembered, that on this twenty-sixth day of August, in the year of our Lord one thousand eight hundred and eighty-six, before me, William Shillaber, a duly appointed notary public, in and for the city and county of New York, and State of New York and commissioner for the State of Mississippi in and for the State of New York, residing in said city and county of New York, personally appeared Edward King, president of the Union Trust Company of New York, and James H. Ogilvie, secretary *pro tem.* of the same company, to me respectively personally known, and known to me to be such officers of said company, who acknowledged to me that in pursuance of authority in them vested by the board of trustees of said company, and as such president and secretary, they signed and delivered the foregoing instrument and affixed thereto the corporate seal of said company, on the day and year therein mentioned, for the purposes therein expressed.

In witness whereof, I have hereunto set my hand and affixed my official seal this 26th day of August, one thousand eight hundred and eighty-six.

[NOTARIAL SEAL.] WILLIAM SHILLABER,
Notary Public, City and County of New York,
Commissioner for the State of Tennessee.

[COMMISSIONER'S SEAL.]

STATE OF NEW YORK, } ss:
City and County of New York, }

Be it remembered, that on this twenty-sixth day of August, in the year of our Lord one thousand eight hundred and eighty-six, before me, William Shillaber, a duly appointed notary public in and for the city and county of New York, State of New York, and commissioner for the State of Louisiana, in and for the State of New York, residing in said city and county of New York, personally appeared Richard Thornton Wilson, president of the Louisville, New Orleans and Texas Railway Company, and Chas. H. Bosher, secretary of the same company, to me respectively, personally known and known to me to be such officers of the said company, and to be the same persons described in and who executed the foregoing instrument in my presence and in that of the two witnesses whose names are hereto subscribed as such, who being by me severally duly sworn, did depose and say: That he, said Richard Thornton Wilson, resides in the city of New York, in the State of New York, and that he, said Charles H. Bosher, resides in the city of New York, in the State of New York: that he, said Richard Thornton Wilson is the president, and he, said Charles H. Bosher is the secretary of the said company; that they know the corporate seal of said company; that the seal affixed to the foregoing instrument is such corporate seal, and that it was so affixed thereto
89 by order of the board of directors of the said company, and that they, the said Richard Thornton Wilson and Charles H. Bosher, signed their names thereto by the like order as president and secretary of said company respectively, and thereupon acknowledged that they had signed, sealed and delivered such instrument as the voluntary act and deed of said company, and as their own voluntary act and deed, for the considerations, uses and purposes therein expressed.

In witness whereof, I have hereunto set my hand, and affixed my official seal this 26th day of August, one thousand eight hundred and eighty-six.

R. T. WILSON.
C. H. BOSHER.

DANIEL OAKEY,
E. MORA DAVISON,
Witnesses.

[NOTARIAL SEAL.] WILLIAM SHILLABER,
Notary Public, City and County of New York,
Commissioner for the State of Tennessee.
[COMMISSIONER'S SEAL.]

STATE OF NEW YORK, } ss:
City and County of New York, }

Be it remembered, that on this twenty-sixth day of August, in the year of our Lord one thousand eight hundred and eighty-six, before me, William Shillaber, a duly appointed notary public in

and for the city and county of New York, State of New York, and commissioner for the State of Louisiana, in and for the State of New York, residing in said city and county of New York, personally appeared Edward King, president of the Union Trust Company of New York, to me personally known, and known to me to be the president of the said company, and to be the same persons described in and who executed the foregoing instrument in my presence and in that of the two witnesses whose names are thereto subscribed as such, who being by me duly sworn, did depose and say: That he resides in the city of New York, in the State of New York, and is the president of the said company; that he knows the corporate seal of said company; that the seal affixed to the foregoing instrument is such corporate seal, and that it was so affixed thereto by authority of the board of trustees of the said company, and that he signed his name thereto by the like authority as president of said company, and the said King thereupon acknowledged that he had signed, sealed, and delivered the said instrument as the voluntary act and deed of said company, and as his own voluntary act and deed for the considerations, uses and purposes therein expressed.

In witness whereof, I have hereunto set my hand, and af-
90 fixed my official seal this 26th day of August, one thousand eight hundred and eighty-six.

EDW'D KING.

E. MORA DAVIDSON,
JAS. H. OGILVIE,
Witnesses.

[NOTARIAL SEAL.] WILLIAM SHILLABER,
Notary Public, City and County of New York, Commissioner for the State of Louisiana.

[COMMISSIONER'S SEAL.]

EXHIBIT G TO O. BILL.

Deed of Trust for Land-grant Income Bonds.

This indenture, made the twenty-seventh day of August, eighteen hundred and eighty-six, between the Louisville, New Orleans and Texas Railway Company, a corporation created and organized under the laws of the States of Tennessee, Mississippi and Louisiana, party of the first part, and Edward H. Pardee, of the city of New York in the State of New York, and Albert Crolius, of the city of Brooklyn in the State of New York, as trustees, as hereinafter mentioned, parties of the second part.

Whereas, the party of the first part has been formed by the consolidation, under the laws of the States of Tennessee, Mississippi and Louisiana of the Tennessee Southern Railroad Company, a corporation created and existing under the laws of the State of Tennessee, the New Orleans, Baton Rouge, Vicksburg and Memphis Railroad Company, and the Memphis and Vicksburg Railroad

Company, corporations created and existing under the laws of the State of Mississippi, and the New Orleans and Mississippi Valley Railroad Company, a corporation created and existing under the laws of the State of Louisiana, and is the owner of a line of railway extending from Memphis in the State of Tennessee, to New Orleans in the State of Louisiana, and is authorized to construct branches thereto.

And whereas, the party of the first part, in accordance with the authority vested in it on that behalf, is about to execute and issue from time to time (but with the limitation hereinafter prescribed in respect to the aggregate amount thereof which may at any time be outstanding), its land-grant income bonds for one thousand dollars each, of the general form and tenor following, to wit:

No. —. $1,000.

Louisville, New Orleans and Texas Railway Company Land-grant Income Bond.

91 The Louisville, New Orleans and Texas Railway Company, for value received, promises to pay to the bearer hereof the sum of one thousand dollars at its agency in the city of New York fifty years after date, and further promises to pay the bearer hereof in the meantime, annually, on the first day of November in each year, at its agency in the city of New York, on presentation of this bond for endorsement of such payment thereon, such interest on such principal sum, (not exceeding, however, six per centum per annum), as the net earnings and income of said railway company from its railways in each current year ending on the first day of July next preceding the day above fixed for the payment of the annual interest hereon shall suffice to pay upon all the bonds of this issue outstanding on such first day of July after the first paying from the earnings and income of said company from such railways the expenses of operating said railways, and of keeping up and maintaining the same, with their appurtenances, and of all improvements, additions, betterments, renewals and acquisitions, and of providing and keeping up suitable equipment, and the expenses of conducting said company's business and affairs, and maintaining its corporate organization, and after likewise paying from said earnings and income the interest payable from time to time upon such other bonds of said company or its successors as shall be from time to time outstanding, and such amounts as may be prescribed to be paid to or towards sinking funds for the redemption thereof.

And if in any year the amount as ascertained and determined to be applicable to the payment of such annual interest on the bonds of this issue shall not be sufficient for the full payment of interest at the rate of six per centum per annum thereon, the amount of such deficiency, whether partial or total, shall not be accumulative, nor be made up out of any surplus income of subsequent years, but shall be absolutely waived, relinquished and discharged.

This bond is one of a series of bonds of said railway company for one thousand dollars each, numbered consecutively from 1 (one) upwards, issued and to be issued at a rate not exceeding twenty thousand dollars per mile of railroad constructed ready for operation, all of which bonds are equally secured by a certain indenture of mortgage or deed of trust, bearing date the 27th day of August, one thousand eight hundred and eighty-six, executed by the said railway company to Edward H. Pardee and Albert Crolius, as trustees, conveying upon the terms and conditions therein expressed, all such lands of said railway company situated in the counties of De Soto, Tunica, Quitman, Coahoma, Bolivar,
92 Washington, Issaquena, Sharkey, Warren and Tate, in the State of Mississippi, as are not and shall not be acquired for the use of said railway company or its successors in the construction or operation of its or their railroads or branches.

This bond shall not become obligatory unless the certificate endorsed hereon is signed by the trustees under the indenture of mortgage or deed of trust securing the same.

In witness whereof, the said Louisville, New Orleans and Texas Railway Company has caused its corporate seal to be hereto affixed, and these presents to be attested by the signatures of its president and secretary, the first day of September, in the year of our Lord one thousand eight hundred and eighty-six.

LOUISVILLE, NEW ORLEANS AND TEXAS RAILWAY COMPANY.

By —— ——, *President.*

—— ——, *Secretary.*

And whereas, the said party of the first part desires to secure the due payment of said bonds by this mortgage.

Now, therefore, this indenture witnesseth: That the said party of the first part, in consideration of the premises, and for the purpose of securing the due payment of the aforesaid bonds, in accordance with the terms, provisions and conditions thereof, and in further consideration of one dollar to the said party of the first part in hand paid at and before the ensealing and delivery of these presents, the receipt whereof is hereby acknowledged, hath granted, bargained, sold, assigned, released, conveyed and confirmed and by these presents doth grant, bargain, sell, assign, release, convey and confirm unto the said Edward H. Pardee and Albert Crolius, trustees as aforesaid, parties of the second part, and their successors or successor in said trust, all such lands of said party of the first part situated in the counties of De Soto, Tunica, Quitman, Coahoma, Bolivar, Washington, Issaquena, Sharkey, Warren and Tate, in the State of Mississippi, as are not and shall not be required for the use of said party of the first part, or its successors, in the construction or operation of its or their railroads or branches, together, with the rents, issues and profits thereof, and also the deferred payments, still remaining unpaid, on account of the purchase price of the like lands sold by said party of the first part since the 25th day of August, 1885, and also (subject to the lien of the first mortgage from

the party of the first part to the Metropolitan Trust Company of the City of New York, dated September 18, 1884; and the first mortgage to the Union Trust Company of New York, dated August 25, 1886; and the second mortgage to the Union Trust Company of New York, dated August 26, 1886), all the rents, issues, tolls, incomes, earnings and profits of its railways or railway lines,
93 which the said party of the first part now possess, or is entitled to, or may become possessed of or entitled to.

To have and to hold, unto the said parties of the second part, and their successors or successor, in the said trust, but in trust for and for the use, benefit and security of, all and singular the persons and corporations who or which shall, from time to time, be or become lawful owners or holders of any of said land-grant income bonds, and for securing the due payment of such bonds respectively, with *pro rata* equality, without preference or priority of any of such bondholders over any of the others.

And the party of the first part doth declare and covenant that the lands herein conveyed are free from all incumbrance whatsoever, except the mortgage or deed of trust between the parties hereto, dated September 18, 1884, and the supplemental deed of trust between the same parties, dated August 25, 1885, and that it has not caused or suffered to be placed thereon any other lien or incumbrance prior or paramount to the lien of this mortgage.

Provided always, nevertheless, and these presents are upon the express condition, that if the said party of the first part, its successors or assigns, do and shall well and truly pay the principal and interest of said land-grant income bonds when and as the same shall become due and payable, in accordance with the terms, provisions and conditions thereof, then these presents and the estates, rights, and interests thereby granted or conveyed shall cease and determine, and become null and void.

And provided further, and it is an express provision and condition of this indenture, that the party of the first part, or its successors, notwithstanding the execution of these presents, shall be permitted at any time, and from time to time, by means of its land department, or otherwise, to lease, sell and dispose of the lands mortgaged hereby, or any part thereof, upon such terms as may be satisfactory to it, and in order that it may be enabled to give title thereto free and discharged from this mortgage, it is an express provision and condition of this indenture, that the trustees hereunder shall, at all times, upon payment to them of the purchase-money of such sales, or the transfer to them of the evidence of indebtedness given therefor by the purchaser, together with such security, if any, as may be taken therefor, execute full releases of the lien hereof, either by indorsement on the deeds to such purchasers, or by separate deeds or releases — may be required of them.

And it is further agreed, that it shall be the duty of the parties of the second part, or their successors, to apply the gross receipts from such sales or disposition thereof, and collections of such deferred payments above mentioned, as follows:

94 First. To the payment of taxes and assessments accrued upon such lands, or imposed in respect thereof, since the 25th day of August, 1885, or which may hereafter accrue upon or be imposed in respect of, such lands.

Second. To the payment of the expenses incurred since the 25th day of August, 1885, or which may hereafter be incurred in the care, custody, management, improvement, and in the cultivating, leasing and selling of such lands. The application of the money to these purposes shall be made from time to time, pursuant to and in accordance with the direction of the railway company; and the said trustees shall at all times apply any moneys or evidences of indebtedness held by them as purchase-money, or deferred payments on account of purchase-money, of any of such lands to the purposes hereinabove referred to, on the requisition of said company through its proper officers.

Third. The net proceeds of such sales or disposition thereof, and of collections of such deferred payments, after payment of amounts as are prescribed in clause "first" and "second" hereof to be paid, shall be applied *pro rata* to or towards the payment and discharge of the said land-grant income bonds issued and secured hereunder, upon the production of such bonds for the endorsement of such payments thereon, but the trustees hereunder shall not be required to make such application of proceeds to the payment and discharge of said land-grant income bonds, except when and as they shall have in their hands applicable to such purpose moneys sufficient to pay at least one per cent. upon such land-grant income bonds then outstanding.

Provided, however, and the foregoing provisions and stipulations in respect to the sales of lands and the disposition to be made of the proceeds thereof, and of collections of deferred payments on lands sold, are subject to the express condition that until all of the income bonds of the Louisville, New Orleans and Texas Railway Company issued under the deed of trust securing income bonds, dated September 18, 1884, and the supplemental deed of trust securing the same, dated August 25, 1885, shall be surrendered and cancelled, and the mortgages or deeds of trust securing the same satisfied of record, the provisions of said deed of trust and supplemental deed of trust, dated September 18, 1884, and August 25, 1885, respectively, shall continue and remain in full force and effect; and all sales made in accordance therewith shall be valid and effectual as well against the rights of the trustees hereunder and the holders of bonds secured hereby as in respect of the trustees under said
95 deeds of trust and the holders of the income bonds therein referred to, and the moneys received from the proceeds of the sales of land and from collections of deferred payments, shall be held, dealt with and disposed of as prescribed in said deed of trust and supplemental deed of trust, dated September 18, 1884, and August 25, 1885, respectively, and until such income bonds shall be so surrendered and cancelled, and such deeds of trust satisfied of record, the provisions hereinbefore contained in respect to the disposition of the proceeds of land sales and collections of deferred payments,

so far as the same may differ from the provisions of said deed of trust and supplemental deed of trust hereinbefore referred to, shall not take effect, but when all of said income bonds shall be surrendered and cancelled, and said mortgages or deeds of trust, dated September 18, 1884; and August 25, 1885, respectively, securing the same, shall be satisfied of record, then the provisions of this deed of trust in respect to land sales and the disposition of the proceeds thereof and of collections of deferred payments shall take full effect.

And provided further, and it is likewise an express condition of this indenture, that until the party of the first part, its successors and assigns, shall have made some default in the payment of the said bonds hereby secured, or of some of such bonds, the said party of the first part, its successors and assigns, shall be entitled to continue in the possession, use and enjoyment of the said mortgaged premises, and in receipt of the income, rents and profits thereof.

But it is an express condition and agreement that the rents, issues and profits of the said lands shall be applied from time to time as they shall be received by the company to such payments as at such time are authorized hereinbefore to be made out of the proceeds of the sales of said lands.

And it is hereby further provided, declared, granted and agreed, that the bonds which may be issued from time to time under this mortgage shall not exceed twenty thousand dollars for each mile of railroad at the time constructed ready for operation, and that the said trustees, or their successors or successor in the trust, shall accept a certificate signed by the president of the party of the first part or its successors, as conclusive evidence of the number of miles of road constructed ready for operation, and the said trustees or their successors shall not be required to look beyond the certificate of the president as herein provided and shall not be responsible in any event for any act done in pursuance of such certificate.

And it is hereby further provided, declared, granted and agreed, that the bonds which have been, or are to be, issued here-
96 under are and shall be serial numbers from one to ten thousand, inclusive, and that no more shall be issued thereunder, and none other shall participate in the benefits or security hereof.

And it is hereby further provided, declared, granted and agreed, that in case default shall be made in the payment of the principal of said bonds hereby secured, or of any of such bonds, when such principal shall be due and payable, then, and in that event, the said parties of the second part, or their successors in the said trust, shall be entitled to, and may, and upon the requisition in writing to that effect of holders of a majority of such bonds hereby secured, and upon being duly and properly indemnified by such bondholders against expense or loss in the premises, shall, either personally, or by agent or attorney, enter into and upon such part of the said mortgaged premises as shall then remain subject to the lien and operation of this indenture of mortgage, and shall have, hold and possess the same, with the rights and privileges thereunto appertaining.

And thereupon it shall be lawful for the said parties of the second part hereto, or their successors in the trust, either personally or by attorney or agent duly constituted therefor by the said trustees, to sell and dispose of all such part of the said mortgaged premises as shall then remain subject to the lien and operation of this indenture of mortgage, at public auction to the highest bidder, either in the city of New York, in the State of New York, or in the city of Vicksburg, in the State of Mississippi, as the said trustees may in their discretion designate, and at such time as they may appoint therefor; provided, however, and it is hereby declared and agreed that preparatory to such auction sale as aforesaid, the said trustee shall give public notice of the time and place, when and where the same is to be made, and of the property to be sold, by advertisement in a newspaper published in the said city of Vicksburg, and in two newspapers of good circulation published in the city of New York, and that such advertisements shall be published in each of such newspapers at least twice in each week for the twelve successive weeks next previous to the day fixed for such sale, with the right, however, to the trustees, after such notice shall have been so published, to adjourn the sale so advertised, from time to time, in the discretion of the trustees, giving reasonable notice or notices of such adjournment or adjournments, and, after so adjourning, to make the sale at the time to which it may be finally adjourned. And it shall be lawful for the said trustees, and they are expressly authorized and empowered upon making any such auction sale of such part of such mortgaged premises as above authorized, to make and deliver to the purchaser or purchasers thereof at such sale, upon his or their paying the purchase money therefor, a good and
97 sufficient deed or deeds of conveyance in the law of the same, which auction sale and the deed or deeds thereupon made as above authorized, it is hereby granted, declared and agreed, shall be good and valid in the law, and shall operate to vest in the grantee or grantees in such conveyances such part of such mortgaged premises so sold in fee-simple and absolutely; and such deed or deeds shall operate to foreclose all equity of redemption of the said party of the first part and its successors or assigns, and shall be a perpetual bar both at law and equity, against the said party of the first part, its successors and assigns, and against any and all persons or corporations claiming, or to claim, such part of such mortgaged premises so sold and conveyed, or any thereof, by from, through or under the said party of the first part, or its successors or assigns.

And it is further provided, declared and agreed, that, from the proceeds of such sale made as aforesaid, the said trustees shall be entitled, in the first place, to deduct and retain or pay for all proper charges or expenses of, or incident to, such advertisement, foreclosure, and sale, and conveyance, including attorney's and counsel's fees, and any and all unreimbursed advances, expenses, charges, and liabilities which may have been properly made or incurred by such trustees in taking possession of such part of said mortgaged premises, or managing the same while in their possession, or in arranging for and completing the sale aforesaid; and also unreimbursed pay-

ments which may have been made by the said trustees for taxes or assessments, and for charges or liens prior to the lien of this indenture, if any such there shall be, as well as the just and reasonable compensation for the services of such trustees in the premises, and the said trustees shall apply the residue of the proceeds of such sale, after the deductions and payments above authorized to be first made thereon, to the payment of the principal of the said land-grant income bonds by this mortgage secured, or intended so to be, or of such of said bonds as may at that time remain outstanding and unpaid; and likewise to the payment of the interest which, according to the provisions, stipulations and conditions of said bonds, shall have accrued up to that time upon the principal of the said bonds thereby secured, and which shall remain unpaid and properly payable, with any interest accrued on such interest after default, without discrimination or preference as between principal and interest, but ratably according to the aggregate amount of such unpaid principal and accrued unpaid interest, which payments shall be made to the bondholders, without any discrimination or preference between them on account of the time of the actual issuing of the bonds, or the time of maturing of the interest thereon.

98 And it is further declared and agreed, that the receipt of the trustees who shall make the sale hereinbefore authorized, shall be a sufficient discharge to the purchaser or purchasers at such sale for his or their purchase-money, and that such purchaser or purchasers, his or their heirs or assigns, or personal representatives, shall not, after paying such purchase-money and receiving such trustees' receipt therefor, be obliged to see to the application of such purchase-money upon or for the trusts or purposes of these presents, or be in anywise answerable for any loss, misapplication, or non-application of such purchase-money by the trustees.

And it is hereby further provided, declared and agreed that the trustees under this indenture, or their successors, upon payment to them of their reasonable claims of charges for services rendered in the trust up to that time, may at any time be removed from the trust by instrument in writing, or concurrent instruments in writing, under the hands and seals of the holders of a majority in interest of the then outstanding bonds secured hereby, or their attorneys-in-fact thereunto authorized.

And it is hereby further provided, declared and agreed, that any vacancy in the office of trustee hereunder may be permanently filled by the appointment of a new trustee or new trustees, by an instrument or concurrent instruments in writing, executed under the hands and seals of the holders of a majority in interest of the then outstanding bonds secured hereby, or their attorneys-in-fact thereunto authorized, but that the board of directors of the party of the first part or its successors may make a temporary appointment to fill such vacancy until a permanent appointment shall be made in the manner above prescribed.

And it is hereby covenanted and agreed, that any new trustees, appointed as aforesaid, whether by a permanent or temporary appointment, shall immediately upon his, its or their appointment,

and without any further act, deed or conveyance, become and be vested with all of the estate, trust, rights, powers and duties of the trustee or trustees in whose place he, it or they shall have been appointed; but, nevertheless, the respective parties hereto, and their respective successors and assigns shall and will, upon request, make, execute and deliver all such releases, conveyances and assurances as shall be appropriate to vest in and confirm and assure to such new trustee or new trustees, such estate, trusts, rights, powers and duties, according to the intent above expressed.

And it is hereby further provided, declared and agreed, that the trustees hereunder shall at once execute a good and sufficient
99 bond, with sufficient surety, in the penalty of $50,000, to secure the faithful performance of the trusts herein assumed, payable to the party of the first part for the benefit of itself and the holders of the bonds herein secured; and shall be entitled to receive reasonable compensation for all services performed, and the repayment of all necessary or proper disbursements made by them in and about the execution of the trusts hereby created, which compensation, if there shall have been an entry by the trustees themselves, or through a receiver or receivers, upon the mortgaged premises, or a sale made of such premises in enforcement of this mortgage, shall be payable out of such mortgaged premises and the proceeds thereof.

The trustees shall not be required to take any steps in the execution of this trust which may subject them to liability or expense unless the holders of the bonds secured hereby, or some of them, shall, from time to time, as required by the trustees, give sufficient security to indemnify them against such liability or expense. The said trustees shall be at liberty to appoint counsel learned in the law in all suitable cases, and the trustees shall not be liable for any default or neglect of any cotrustee, or of any agent by them appointed, when such agent shall have been selected with reasonable discretion, and shall only be required to exercise good faith and ordinary diligence in the performance of their duties under this indenture. It is further agreed that the trustees may at any time resign and discharge themselves from their trust upon giving to the party of the first part, or its successors, ninety days' notice of their purpose so to do, unless a shorter notice may be accepted by the party of the first part or its successors therefor.

And the said party of the first part, for the considerations aforesaid, doth hereby covenant and agree to and with the said parties of the second part and their successors, as trustees, and likewise to and with the holders from time to time of the several bonds issued under and secured by this indenture, that the said party of the first part, its successors and assigns, shall and will from time to time, and at all times hereafter, upon reasonable request, make, do, execute, acknowledge, and deliver all such further acts, deeds, conveyance- and assurances in the law, for the better and more effectually assuring, conveying and confirming unto the said trustees and their successors in the trust hereby created, upon the trusts and for the uses and purposes herein expressed or intended, all and singular

the premises hereby mortgaged or conveyed in trust, or agreed or purporting or intended so to be, as by such trustees or bondholders, under the advice of counsel, shall be reasonably advised, devised or required.

And the said parties of the second part do hereby accept
100 the trusts hereby created, upon the terms and conditions hereinbefore expressed.

In witness whereof the said party of the first part hath hereto affixed its corporate seal, and caused the same to be attested by its president and secretary; and the said parties of the second part respectively have hereunto set their hands and seals the day and year first above written.

LOUISVILLE, NEW ORLEANS AND TEXAS RAILWAY COMPANY,

[CORPORATE SEAL.] By R. T. WILSON, *President.*

Attest: C. H. BOSHER, *Sec'ty.*

E. H. PARDEE. [SEAL.]
ALBERT CROLIUS. [SEAL.]

STATE OF NEW YORK, } ss:
City and County of New York, }

Be it remembered that on this twenty-seventh day of August, in the year of our Lord one thousand eight hundred and eighty-six, before me, William Shillaber, a duly appointed notary public, in and for the city and county of New York, State of New York, and commissioner of the State of Mississippi in and for the State of New York, residing in said city and county of New York, personally appeared the within-named Richard T. Wilson, president of the Louisville, New Orleans and Texas Railway Company, and Charles H. Bosher, secretary of the same company, to me respectively personally known, and known to me to be such officers of the said company, who acknowledged that in pursuance of authority in them vested by the board of directors of said company, and as such president and secretary they signed and delivered the foregoing instrument, and affixed thereto the corporate seal of said company, on the day and year therein mentioned.

In witness whereof, I have hereunto set my hand and affixed my official seal, this 27th day of August, one thousand eight hundred and eighty-six.

[NOTARIAL SEAL.] WILLIAM SHILLABER,
Notary Public, City and County of New York,
Commissioner of the State of Mississippi.

[COMMISSIONER'S SEAL.]

101 STATE OF NEW YORK, } ss:
City and County of New York, }

Be it remembered that on this twenty-seventh day of August, in the year of our Lord one thousand eight hundred and eighty-six,

before me, William Shillaber, a duly appointed notary public in and for the city and county of New York, and State of New York, and commissioner for the State of Mississippi in and for the State of New York, residing in said city and county of New York, personally appeared the within-named Edward H. Pardee and Albert Crolius, to me respectively personally known, and known to me to be two persons who executed the foregoing instrument, and acknowledged to me that they signed and delivered the foregoing instrument, and affixed thereto the corporate seal of said company, on the day and year therein mentioned, for the purposes therein expressed.

In witness whereof, I have hereunto set my hand and affixed my official seal, this 27th day of August, one thousand eight hundred and eighty-six.

[NOTARIAL SEAL.] WILLIAM SHILLABER,
Notary Public, City and County of New York,
Commissioner of the State of Mississippi.

[COMMISSIONER'S SEAL.]

UNITED STATES OF AMERICA,)
Southern District of Mississippi.)

ILLINOIS CENTRAL RAILROAD COMPANY)
vs.
WIRT ADAMS, State Revenue Agent, ET ALS.)

Know all men by these presents that we, the Illinois Central Railroad Company, as principal, and Samuel S. Carter and John Hart as sureties, are held and firmly bound unto Wirt Adams, State revenue agent, the Railroad Commission of the State of Mississippi, J. J. Evans, M. M. Evans, and John D. McInnis, members of such railroad commission, and Thos. C. Kimbrough, clerk of said commission, and any of them and each of them, in the sum of ten thousand dollars, for the payment of which well and truly to be made, we and each of us do hereby bind ourselves, our heirs, administrators, executors and assigns, and successors, firmly by these presents.

Witness our signatures, this the 5th day of August, A. D. 1898.

The condition of the above obligation is such, that whereas
102 the said Illinois Central Railroad Company has filed on the chancery side of the United States circuit court in and for the southern district of Mississippi, at Jackson, a bill in chancery against the parties above mentioned as obligees hereof, and against the Yazoo & Mississippi Valley Railroad Company, and has obtained an allowance of an injunction therein against the said parties above named as obligees hereof, as prayed for in said bill from said court:

Now, if the said Illinois Central Railroad Company shall abide the decision of said court, and pay all monies and costs which shall be adjudged against it in the case the said injunction shall be dis-

solved, then these presents shall be void; otherwise to remain in full force.

THE ILLINOIS CENTRAL
RAILROAD COMPANY,
By E. MAYES, *Attorney.*
SAM'L CARTER.
JOHN HART.

This bond approved this 5th day of August, 1898.
L. B. MOSELEY, *Clerk.*

UNITED STATES OF AMERICA, }
Southern District of Mississippi, at Jackson. }

In the Circuit Court of the United States for said District. In Chancery.

THE ILLINOIS CENTRAL RAILROAD COMPANY }
vs. } No. 560.
WIRT ADAMS, State Revenue Agent, ET ALS. }

Injunction Writ.

To Wirt Adams, State revenue agent, and to the Railroad Commission of the State of Mississippi and to J. J. Evans and to M. M. Evans and to John D. McInnis, members of said commission, and to Thomas C. Kimbrough, clerk of said commission, *these:*

Whereas, it has been represented to us, in our circuit court of the United States for the southern district of Mississippi, sitting at Jackson, on the part of The Illinois Central Railroad Company, complainant, that it has lately exhibited its bill of complaint in our said circuit court for the district aforesaid against you, the said Wirt Adams, State revenue agent, and against you, the said Railroad Commission of the State of Mississippi, and the said J. J.
103 Evans, and the said M. M. Evans, and the said John D. McInnis, members of said commission, and the said Thomas C. Kimbrough, clerk of said commission, and The Yazoo & Mississippi Valley Railroad Company, defendants, to be relieved touching the matters therein complained of; in which bill it is stated, amongst other things, that you, with others, are about to take measures and steps to the great injury of said complainant touching matters set forth in the said bill, and that your actings and doings in the premises are contrary to equity and good conscience; we, therefore, in consideration thereof, and of the particular matters in the said bill set forth, do strictly command and enjoin you, the said Wirt Adams, State revenue agent, and the said Railroad Commission of the State of Mississippi, and the said J. J. Evans and the said M. M. Evans, and the said John D. McInnis, members of said commission, and the said T. C. Kimbrough, clerk of said commission, each and every of you, under the pains and penalties which may fall upon you or all of you in case of disobedience, that you do absolutely desist and refrain as follows:

That the said railroad commission and the members thereof as above stated, do desist and refrain from approving, and the said railroad commission, and the members thereof as above stated, and the said T. C. Kimbrough, clerk of said commission, do desist and refrain from certifying, the assessment for taxes by said railroad commission made and ordered on the 2nd day of August, 1898, on the Natchez & Jackson railroad for the years 1886 to 1891, inclusive, or any of them to the several counties through or in which the said railroad is located, or any of them, or to any of the cities or towns along the said line of railroad; and also from approving or certifying such records of assessment and taxation, and from approving or certifying the valuation which the said railroad commission, as board of assessors of the State of Mississippi has fixed upon said railroad and from certifying their action, as such board of assessors to any county, town, or individual whatever, until the further orders of said court.

And that the said Wirt Adams, State revenue agent, do absolutely desist and refrain from beginning, by himself, or his solicitor or attorneys, or agents, or advising or inciting any of the counties or towns aforesaid to begin any suit for the recovery of any judgment or decree for the said taxes, or for the enforcement of the alleged lien for taxes for any of the years mentioned above, and from taking any proceedings looking to the subjection of the said property, known as the Natchez & Jackson railroad, to the payment of the taxes so assessed, or any of them, until the further orders of said court.

Witness the Honorable Melville W. Fuller, Chief Justice
104 of the Supreme Court of the United States, at Jackson, Mississippi, in the said district, this the fifth day of August, anno Domini, one thousand, eight hundred and ninety-eight, and the seal of the said circuit court hereunto affixed.

[Seal of the Circuit Court.]

L. B. MOSELEY, *Clerk.*

Received and filed Sept. 7th, 1898.

L. B. MOSELEY, *Clerk.*

Received the within process at Jackson, Miss., on August 5th, 1898, and executed the same as follows: Executed August 5th, 1898, upon the defendant Thos. C. Kimbrough, clerk of the railroad commission of Mississippi, in person, by handing him a true copy of this process, each for himself, and J. J. Evans, and M. M. Evans and John D. McInnis, members of said commission. Executed August 5th, 1898, upon the defendant, Wirt Adams, State revenue agent, in person, by handing to him a true copy of this process. Executed September 5th, 1898, upon the defendants J. J. Evans, M. M. Evans, and John D. McInnis, members of the railroad commission of Mississippi, in person, by handing to each of them a true copy of this process. Executed upon all of the defendants at Jackson, Miss.

F. W. COLLINS,
U. S. Marshal.

By R. O. EDWARDS,
Deputy U. S. M.

In the Circuit Court of the United States for the Southern District of Mississippi.

ILLINOIS CENTRAL RAILROAD COMPANY
vs.
WIRT ADAMS, State Revenue Agent; The Yazoo & Mississippi Valley Railroad Co., *et al.* } In Equity. No. 560.

Motion to Discharge Restraining Order.

Now come the defendants, Wirt Adams, State revenue agent of the State of Mississippi; J. J. Evans, M. M. Evans, and John D. McInnis, constituting the railroad commission and State railroad assessors of said State, and their clerk, —— ——, and move the court to discharge the restraining order, or temporary injunction heretofore granted, and quash the restraining or injunction writs and they object to the granting or issuance of any injunction against them, or any of them, because:

105 1st. They have no authority to distrain, or levy on or sell anything for said taxes, and were, and are merely performing the duties enjoined upon them by and under the laws of Mississippi, and an injunction against them, or any of them is a suit against the State of Mississippi and forbidden by the 11th amendment to the Constitution of the United States.

2nd. Said railroad commission in making said assessments act judicially and cannot be enjoined, and said revenue agent cannot act until after said assessments are made, approved, and the rolls sent to the various counties as required by the laws of Mississippi.

3rd. Said injunction was prematurely applied for.

4th. Plaintiff has shown no right to file the bill in this case, under the 94th equity rule or otherwise.

5th. This court has no jurisdiction.

6th. Plaintiff is not entitled to an injunction on the facts shown in the bill.

7th. There is no equity on the face of the bill.

CRITZ, BECKETT & KIMBROUGH,
CALHOUN & GREEN,
Solicitors for State Revenue Agent.

Filed January 17th, 1899.

L. B. MOSELEY, *Clerk.*

UNITED STATES OF AMERICA,
Southern District of Mississippi.

In the Circuit Court of the United States, Sitting at Jackson.

ILLINOIS CENTRAL RAILROAD COMPANY
vs.
WIRT ADAMS, State Revenue Agent, *et als.* } No. 560.

The complainant in the above-entitled cause, The Illinois Central Railroad Company, moves the court to order the issuance of a tem-

porary injunction until the final hearing and the further order of this court, as prayed for in the original bill.

MAYES & HARRIS,
Solicitors for Complainant.

Filed and entered January 18th, 1899.

L. B. MOSELEY, *Clerk.*

106 ILLINOIS CENTRAL RAILROAD COMPANY
vs.
WIRT ADAMS, State Revenue Agent, Y. & M. V. R. R. Co., *et al.*, N., J. & C. } No. 560.

1. Original record of railroad commission, No. 1223.
2. Certificate of Kimbrough, clerk.
3. Mississippi Valley Co. charter.
4. Certified copy of Mills *vs.* Cook, and
5. Copy of record in Lambert case.
6. Certified copy of opinion of supreme court of Nov. 22nd, 1898.
7. Copy of opinion of supreme court June 20th, 1898.

In the Circuit Court of the United States for the Southern District of Mississippi.

ILLINOIS CENTRAL RAILROAD COMPANY
vs.
WIRT ADAMS, State Revenue Agent, ET ALS., Yazoo & Mississippi Valley Railroad Co. } In Equity. No. 560.

Agreement of Counsel.

It is agreed:

1. That the hearing of the motions to discharge the restraining order, and for an injunction, was postponed from time to time, by agreement, from September, 1898, to January, 1899; and that the cause was heard on said motions, notice being waived, in January, 1899, by agreement.

2. That in regard to the record in Miss. Mills *vs.* Cook, sheriff, that only the original bill need be copied in the transcript; and it is agreed that this bill was demurred to; the demurrer was sustained by the chancellor March 12th, 1873, and appeal to supreme court duly taken; and that the printed report of said case in 56 Miss., p. 40, may be treated as the rest of said record; and that it was decided at April term, 1878, of said court.

3. That as to the record in The Natchez, Jackson & Columbus Railroad Company *et al. vs.* Lambert, sheriff, that only the original bill and the affidavits, Exhibits D and E thereto, and the demurrer thereto need be copied in the transcript; and that to said bill there was a plea of *res adjudicata*, supported by a record, wherein
107 L., N. O. & T. R'y Co. as complainant, had sought to enjoin said Lambert from subjecting its property, acquired from N., J. & C. R. R. Co., to the payment of State and county taxes, upon substantially the same averments as in bill in N., J. & C. R. R.

Co. *vs.* Lambert, *supra*, except that it was averred that the taxes had been paid for 1891, by affidavit of proper officers of L., N. O. & T. R. R. Co., of application of the amount of said taxes on the debts of construction of the said L., N. O. & T. R'y Co., that the demurrer was sustained on March 23rd, 1893, by the chancellor, and the cause was duly appealed to the April term, 1893, returnable April 17th, 1893, and was decided by supreme court at said term on the — day of ——, 1893; and that the printed report of said case in 70 Miss., p. 779, may be treated as the rest of said record.

4. That the certified copies of the decisions of the supreme court of Mississippi rendered June 28th, 1898, and November 22nd, 1898, in the case styled "Wirt Adams, State revenue agent, appellant, *vs.* The Yazoo & Miss. Valley R. R. Co. *et al.*, appellees," need not be copied in the record, but may be used as published in the "Mississippi Decisions" and in connection with briefs of counsel.

F. A. CRITZ &
R. C. BECKETT,
S. S. CALHOUN, AND
MARCELLUS GREEN,
Sols. for Appellees, Except Y. & M. V. R. R. Co.
EDWARD MAYES,
Attorney for Appellant.
EDWARD MAYES,
Attorney for Y. & M. V. R. R. Co.

No. 1223.

JACKSON, MISSISSIPPI, *Dec.* 31, 1897.

To the railroad commissioners of the State of Mississippi, Jackson, Mississippi.

GENTLEMEN: Please take notice that the *the* following described property in said State, viz: the Natchez, Jackson & Columbus Railroad Company and the Louisville, New Orleans and Texas Railway Company and the Yazoo & Mississippi Valley Railroad Company, the property of said companies being that railroad between the cities of Natchez and Jackson in said State, known as the Natchez, Jackson & Columbus railroad, has escaped taxation during the years 1886, 1887, 1888, 1889, 1890, and 1891, because of not being assessed heretofore.

By virtue of an act of the legislature of said State, approved February 7th, 1894, entitled "An act to provide for the election of a State revenue agent to prescribe his powers and duties and
108 to repeal sections 4187, 4190, 4191, 4192, 4193 and 4195, chapter 126 of the Annotated Code of 1892" I now hereby respectfully notify you, within ten days hereafter, to make the proper assessment of said property by way of an additional assessment, or at as early a date as possible, consistent with the requirements of the law, on the rolls or tax-list in your hands, and to give ten days, or longer, notice in writing, to the Yazoo & Mississippi Valley Railroad Company and the Natchez, Jackson & Columbus Railroad

Company, whose company and property *is* so assessed, and herein fail — under the penalties imposed by said act.

Witness my signature this December 31st, 1897.

WIRT ADAMS,
State Revenue Agent.

No. 1223.

Summons to Gen. W. T. Martin.

JACKSON, MISSISSIPPI, *December 31st*, 1897.

To the railroad commission of the State of Mississippi, Jackson, Mississippi.

GENTLEMEN: Please take notice that the following-described property in said State, viz: the Natchez, Jackson and Columbus Railroad Company, and the Louisville, New Orleans & Texas Railway Company, and the Yazoo and Mississippi Valley Railroad Company, the property of said companies being that railroad between the cities of Natchez and Jackson in said State, known as the Natchez, Jackson & Columbus Railroad Company, has escaped taxation during the years 1886, 1887, 1888, 1889, 1890 and 1891, because of not being heretofore assessed:

By virtue of an act of the legislature of said State, approved February 7th, 1894, entitled "An act to provide for the election of a State revenue agent, to prescribe his powers and duties, and to repeal sections 4187, 4190, 4191, 4192, 4193 and 4195, chapter 128 of the Annotated Code of 1892," I now, hereby, respectfully notify you, within ten days hereafter, to make proper assessment of said property by way of an additional assessment, or at as early a date as possible consistent with the requirements of the law, on the rolls or tax-lists in your hands, and to give ten days, or longer, notice in writing, to the Yazoo & Mississippi Valley Railroad Com-
109 pany and the Natchez, Jackson & Columbus Railroad Company, whose company and property *is* so assessed, and herein fail not under the penalty imposed by said act.

Witness my signature this, December 31st, 1897.

WIRT ADAMS,
State Revenue Agent.

The State of Mississippi to the Yazoo and Mississippi Valley Railroad and the Natchez, Jackson & Columbus Railroad:

You are hereby notified to appear before the railroad commission of the State of Mississippi at their office in the capitol in the city of Jackson, Mississippi, on the 7th day of January, 1898, to show cause, if any you can, why that commission should not assess the railroad and railroad property formerly known as the Natchez, Jackson & Columbus railroad, for the years 1886, 1887, 1888, 1889, 1890 and 1891, as petitioned for by Wirt Adams, State revenue agent of said State, a copy of which is hereto attached and made part hereof.

Done in said office this 4th day of January, 1898.

In witness whereof I hereto set my hand and official seal.

[SEAL.] T. C. KIMBROUGH, *Secretary.*

The State of Mississippi to the sheriff of Adams county, Greeting:

We command you to summon Gen. W. T. Martin to be and appear before the railroad commission of Mississippi at the office of the commission at the capitol in Jackson on the 17th day of January, 1898, then and there to answer the notices herein enclosed, if to be found in your county, and further to do and receive whatever the said commission may consider or decree in this behalf. Herein fail not under the penalty provided by law, and have you then there this writ.

Witness my hand this 7th day of January, A. D. 1898.

[SEAL.] T. C. KIMBROUGH,
Clerk Railroad Commission.

Received on the 8th day of January, 1898.

S. DUNCAN BAKER, *Sheriff.*

I have this day executed the within writ personally by delivering to the within-named defendant Gen. W. T. Martin a true copy of this writ, with a true copy of each of the within notices hereto attached.

This the 11th day of January, A. D. 1898.

S. DUNCAN BAKER, *Sheriff,*
By V. M. LIDDELL, *Deputy.*

110 STATE OF MISSISSIPPI, }
County of Hinds. }

In the Matter of the Assessment of the Natchez & Jackson Railroad. No. 1223.

To the honorable the railroad commission of the State of Mississippi:

The Yazoo & Mississippi Valley Railroad Company appears and gives the said railroad commission respectfully to understand that it denies that the said property herein sought to be assessed at the instance of the said revenue agent, for the years 1886 to 1891 are subject to assessment for taxation at this time by this honorable body, and it further denies that, even if the same were subject to taxation, that said taxes can be assessed against the said Yazoo & Mississippi Valley Railroad Company.

It denies that the said property escaped taxation for the years therein mentioned for want of assessment.

And the said company further shows that the said Natchez, Jackson & Columbus Railroad Company, originally called the Natchez & Jackson Company, is now extinct. And also the said Louisville, New Orleans and Texas Railway Company is now extinct.

And the said company further shows that even if the said property were lawfully liable to be assessed for taxation, as pretended, this company cannot make and prepare the schedules called for, for the reason that during the years 1886, to 1891, inclusive, this com-

pany was not the owner of the property; nor were any of its officers and agents who would have to prepare and make such schedules; officers and agents of either said Louisville, New Orleans and Texas Railway Company, or said Natchez & Jackson Railway Company, but during such periods, and during the whole of such period, this company had no connection with said property in any manner whatever.

Respectfully submitted,

THE YAZOO & MISSISSIPPI VALLEY RAILROAD CO.,
By MAYES & HARRIS, *Attorneys.*

Filed August 2nd, 1898.

No. 1223.

To the honorable the railroad commission of the State of Mississippi:

The Yazoo & Mississippi Valley Railroad Company objects
111 to the proposed assessment of its branch from Jackson to Natchez for taxation as for the years 1886 to 1891 as proposed, for the following reasons:

Because *if* section 21 of the charter of the Mobile & Northwestern Railroad Company (Laws of 1870, page 255) extended to the Natchez, Jackson & Columbus Railroad Company by the act of August 8th, 1870; followed by the act of March 12th, 1884, (Laws 1884, page 29); and by the act of February 19th, 1890, (Laws 1890, page 675).

And because the said act of 1890 was carried out by the sale of said railroad to the Louisville, New Orleans and Texas Railway Co., as authorized.

And because, in the years 1892 the said Louisville, New Orleans & Texas Railway Company was consolidated with and onto the Yazoo & Mississippi Valley Railroad Company, as authorized by their respective charters.

And because the payments made by said section 21, so adopted, were made annually as shown, in the manner required by said statute, the affidavits therein required having been regularly and duly delivered to the respective tax collectors, and receipts for such taxes having been received *com*formably to law:

And because the profits of said railroad have never enabled it to declare the dividend provided for in said section as a limitation on the continuance of said privilege.

And because in the case of Railroad Company *vs.* Lambert, 70 Miss., 779, the entire question has been judicially determined in favor of the said company herein objecting; and said determination and record are relied on as *res adjudicata* of these matters.

Respectfully submitted.

MAYES & HARRIS,
Attorneys for Y. & M. V. Railroad.

In the Matter of the Assessment of Natchez, Jackson & Columbus R. R. from 1886 to 1891, Inclusive, on Notice of—

WIRT ADAMS, State Revenue Agent,
vs.
Y. & M. V. R. R. Co. and N., J. & C. R. R. Co. } No. 1223.

This day came to be heard this cause on the notice of Wirt Adams, State revenue agent, to this commission to assess the property and franchises of the Natchez, Jackson & Columbus Railroad Company for State, county and municipal taxes for the years
112 1886 to 1891, inclusive, and notice having been duly served on the Yazoo & Mississippi Valley Railroad Company, the present owner of the property and franchises of the Natchez, Jackson & Columbus Railroad Company, and it now here appearing by its attorney, and notice of this assessment having also been duly served on W. T. Martin, a director of the Natchez, Jackson & Columbus Railroad Company, but said Natchez, Jackson & Columbus Railroad Company, though duly summoned, came not, but made default, and said Yazoo & Mississippi Valley Company, having filed its objection to the assessment of the property and franchises of the Natchez, Jackson & Columbus Railroad Company, in writing, by its attorneys, for both parties, the said objections are hereby overruled; and the commission thereupon proceeded to hear evidence to determine what the valuation should be of said property and franchises for the said years; and thereupon, after the hearing, the examination and cross-examination of witnesses and the record and evidence presented, and each side having introduced all the evidence it desired to introduce before the commission, it is ordered:

That the said property and franchises of the said Natchez, Jackson & Columbus Railroad Company *has* escaped taxation, State, county and municipal, for the years 1896 to 1891, inclusive from not being assessed and that the same *is* hereby assessed at and for the amounts set opposite thereto on the assessment-rolls of the counties of Adams, Claiborne, Copiah, Jefferson and Hinds, and of the assessment-rolls of the several municipalities of Natchez, etc., for the years 1886 to 1891, inclusive, now here, made by the commission and which assessment-rolls are made a part of this order.

And on demand of said Yazoo & Mississippi Valley Railroad Company by its attorney, it is ordered that the said assessments so made, remain on file for thirty days for the filing of objections thereto.

A true copy of minutes.

T. C. KIMBROUGH, *Secretary.*

WIRT ADAMS, State Revenue Agent,
vs.
YAZOO & MISS. VALLEY RAILROAD, NATCHEZ, JACKSON & Columbus. } No. 1223.

Came on to be heard finally the notice and application of Wirt Adams, State revenue agent, to assess the property of the Yazoo &

Mississippi Valley Railroad Company and the Natchez, Jack-
113 son & Columbus Railroad Company, the properties of said company being the railroad between the cities of Natchez and Jackson, in the State of Mississippi, known as the Natchez, Jackson & Columbus Railroad Co., for the years from 1886 to 1891, inclusive, and notice having been issued to said Yazoo & Mississippi Valley Railroad Company and the Natchez, Jackson & Columbus Railroad Company, and duly served upon them, this cause having been continued by counsel of cause from time to time, and now, having heard argument of counsel for Wirt Adams, State revenue agent, the counsel for said railroad companies saying nothing and it appearing that the property of the said Natchez, Jackson & Columbus Railroad Company, a division of the Yazoo & Mississippi Valley Railroad Company, has escaped taxation for the years 1886, 1887, 1888, 1889, 1890 and 1891, inclusive, and that it has not been assessed for taxes for any of said years, and that it should be so assessed; and it further appearing that this commission has no schedule showing the value of the property of said railroad from 1886 to 1891, inclusive, and that no such schedules have ever been furnished by said railroad company to the auditor of public accounts as the law then required, it is therefore ordered:

That said companies be directed, and they are hereby required to furnish this commission with a complete schedule of all its property, and the value thereof for the years 1886 to 1891, inclusive, so that a proper schedule and assessment for taxes due on its property may be had for the said years, at the regular meeting of the commission to be holden in the office of the railroad commission in the city of Jackson, Mississippi, on the 1st day of August, 1898.

I, T. C. Kimbrough, clerk of the Mississippi railroad commission, hereby certify that the annexed instrument of writing is a true and correct copy of an order made by the Mississippi railroad commission on the 20th day of June, 1898.

Witness my hand and official seal this 19th day of July, 1898.

[SEAL.] T. C. KIMBROUGH, *Secretary.*

The State of Mississippi to the sheriff of Adams county, Greeting:

You are hereby commanded to subpœna Gen. Will T. Martin, a director of the Natchez, Jackson & Columbus Railroad Company, if to be found in your county, to be and appear before the railroad commission of Mississippi at their office at the capitol, in Jackson, on the 1st day of August, 1898, and then and there to answer
114 all matters pertaining to the attached order of this commission, and have there then this writ.

Witness the signature of the chairman of the railroad commission this 19th day of July, 1898.

J. J. EVANS, *Chairman.*

[SEAL.] T. C. KIMBROUGH, *Clerk.*

Received July 20th, 1898.

S. DUNCAN BAKER, *Sheriff.*

I have this day executed the within writ personally by delivering to the within-named General Will T. Martin a true copy of the attached order of the commission, a true copy of attached certificate and a true copy of this writ. This 22nd day of July, A. D. 1898.

S. DUNCAN BAKER, *Sheriff*,
By V. M. LIDDELL, *D. S.*

Office of the Mississippi Railroad Commission, Jackson, Mississippi.

In Mississippi Railroad Commission.

In re WIRT ADAMS, State Revenue Agent,
vs.
N., J. & C. DIV. OF THE YAZOO AND MISSISSIPPI VALLEY Railroad Company. } 1223.

I, T. C. Kimbrough, secretary of the said commission, hereby certify that before the service of the writ of injunction issued from the district court of the United States for the southern district of Mississippi, upon the fiat of Hon. H. C. Niles, judge of said court, in Illinois Central Railroad Co. *vs.* Wirt Adams, State revenue agent, *et als.*, the said commission made up the assessment-roll of the property of the said N. J. & C. Div. of the Yazoo and Mississippi Valley railroad for taxation under the order of said commission in this cause on August 2nd, 1898, and that the said assessment-roll has from that time been on file for objections under said order and no objections have been filed thereto.

Witness my hand and seal of office, this 30th day of August, 1898.

[SEAL.] T. C. KIMBROUGH.

115 S. B. No. 186.

An act to incorporate the Mississippi Valley Company.

SECTION 1. Be it enacted by the legislature of the State of Mississippi, That J. B. Fant, Thomas J. Malone, A. J. McConico, A. M. West, G. Burgland, R. P. Neiley and H. L. Duncan, and their associates, successors and assigns be and they are hereby incorporated under the name and style of the "Mississippi Valley Company," and by that name, style and title shall have perpetual succession, and all the privileges, franchises and immunities by law incident to a corporation, may sue and be sued, plead and be impleaded, complain and defend in all courts of law and equity, and may purchase, receive, hold and enjoy, to them, their successors and assigns, all such lands, tenements, leasehold estates and hereditaments, goods and chattels, securities, and estates, real, personal and mixed, of what kind and quality soever, and may sell and convey the same at pleasure, and shall also be authorized to erect residences, depots, engine-houses, tracks, shops and other improvements necessary for the purposes of the said corporation as hereafter defined by the second section of this act; and the same may, from time to time sell, convey, mortgage and submortgage, encumber, charge, pledge,

grant, lease, sublease, alien and dispose of, and also make and have a common seal, and the same to alter and renew at pleasure, and ordain, establish and put in execution such by-laws or ordinances, rules and regulations, as may be necessary or convenient for the government of the said corporation, not being contrary to the constitution and laws of this State, and generally may do all and singular the matters and things which to them shall appertain to do for the well-being of the said corporation and the management and ordering of the affairs and business of the same.

SECTION 2. Be it further enacted, That the corporation hereby created shall have power to contract with any person or persons, firms, corporations or any other parties whomsoever, formed or existing, or that may hereafter exist in any way; that said parties or any of them may have authority to do, to build, construct, maintain or manage any work or works, public or private, which may tend or be designed to improve, increase, facilitate or develop trade, travel or the transportation and conveyance of freight, live stock and passengers and any other traffic by land or water from or to any part of the United States or the territories thereof, and the said company shall also have power and authority to supply or furnish all needful material, labor, implements, instruments
116 and fixtures of any and every kind whatsoever, on such terms and conditions as may be agreed upon by and between the parties respectively, and also to purchase, erect, construct, maintain or conduct in its own name, and for its own benefit or otherwise, any such works, public or private, as they may by law be authorized to do, (including also herein lines for telegraphic communication) and to aid, co-operate, and unite with any other company, person, or firm in so doing.

SECTION 3. Be it enacted further, That the company hereby created shall also have the power to make purchases and sales, for investments in the bonds, stocks and securities of the companies and to make advances of money and of credit to other companies, and to aid in like manner contractors and manufacturers, and to receive and hold on deposit, or as collateral or otherwise, any estate or property, real or personal including the notes, stocks, obligations and accounts of individuals and companies and the same to purchase, collect, adjust and settle, and also to pledge, sell and dispose thereof on such terms as may be agreed between them and the parties contracting with them and also to endorse and guarantee the payment of the ob igations of other corporations, firms and individuals, and to assume, become responsible for, execute and carry out any contracts, leases or subleases made by any company, to or with any other company or companies, individuals or firms whatsoever, provided that nothing herein contained shall be construed as to give the said corporation any banking privileges or franchises, or the privileges of making, issuing or putting in circulation any notes, bills, or other paper of any o her bank to circulate money provided, that nothing herein contained shall be construed as preventing this company from availing themselves of the provisions of the act of Congress for a national system of banking.

SECTION 4. Be it enacted further, That the company hereby created shall also have power to enter upon and occupy the lands of individuals or companies (on making payment therefor or giving security according to law) for the purpose of erecting, constructing, maintaining or managing any public work such as is provided for or mentioned in the second section of this act, and to construct and erect such works thereon and also buildings, improvements, structures, roads or fixtures as may be necessary or convenient for the purpose of said company, under the powers herein granted, and to purchase, make, use and maintain any works or improvements, connecting, or intended to be connected with the work of the said company, and to merge, consolidate or unite with the said company the improvements, property and franchises of any other company or companies on such terms and conditions, as the said company may agree upon, and to fix and regulate the tolls or charges
117 to be charged or demanded for any freight, property or passengers traveling over or passing over any improvement erected, managed or owned by the said company on any merchandise or property transported over any road whatsoever by said company, and to make from time to time dividends from the profits made by said company. Any railroad or the several railroads managed by said company shall be taxable as provided in their charter or other laws of the State and in proportion to their length within this State, respectively, and the property of said "Mississippi Valley Company" that is within the limits of the State, and all its income derived from its business within this State, shall forever be subject to taxation, the same as that of individuals, but its property beyond the limits of this State, and all its income derived from its business beyond the limits thereof shall not be subject to taxation nor shall it at any time be subject to a privilege tax, or any other tax, except as is stipulated in the constitution of the State or as provided in the acts of Congress.

SECTION 5. Be it further enacted, That the capital stock of said company shall consist of one thousand shares of the value of fifty thousand dollars each, being fifty thousand dollars, and with the privilege of increasing the same by a vote of the holders of a majority of the stock present at any annual meeting or special meeting to such an amount as they may from time to time deem needful, and the corporators or any three of them named in the first section of this act, shall have power to open books for subscription at such times and places as they may deem expedient and when not less than five hundred shares shall have been subscribed and twenty per centum thereon shall have been paid in.

The shareholders may elect not less than three nor more than nine directors to serve until the next annual election or until their successors shall be duly elected and qualified, and the directors so elected may and they are hereby authorized and empowered to have and to exercise in the name and in behalf of this company all the rights and privileges which are intended to be hereby given subject only to such liabilities as other shareholders are subject to which liabilities are no more than for the payment to the company of the

sums due or to become due on the shares held by them, over and above this no stockholder shall be individually liable and should the capital stock at any time be increased, the stockholders at the time of such increase shall be entitled to a *pro rata* share of such increase, upon the payment of the instalment thereon duly called for and whenever all increase of capital stock is made, a certificate thereof fully executed under the corporate seal of the company and signed by the president and secretary, shall be filed with the secretary of state before the same shall be deemed valid.

118 SECTION 6. Be it further enacted, That the principal office of the said company shall be in Water Valley until otherwise ordered and hereinafter provided, but the directors under such rules and regulations as they may prescribe, may establish branches or agencies in other parts of the State or elsewhere, all of the directors of said company shall be citizens of the United States and reside therein.

SECTION 7. Be it further enacted, That the directors shall be elected annually by the stockholders on the first Tuesday of June of each year, and said directors shall elect from their number at the first meeting of the board after their election a president, and shall also have power to elect from their number or otherwise a vice-president, a treasurer and secretary, and such other officers, clerks, and agents as the business of the company may require, all elections for directors shall be by ballot and every stockholder shall be entitled to one vote for each share of stock held by him either in person or by proxy, but no person shall be eligible as director who is not a stockholder to the amount of ten shares. At the annual or special meeting a quorum shall consist of stockholders in person or by proxy owning at least one-half the capital stock.

SECTION 8. Be it further enacted, That ten days' notice shall be given by publication in two newspapers published in the State of Mississippi of the time and place of the annual election which election shall be conducted by three stockholders one of which shall act as judge, and the other two as inspectors.

SECTION 9. Be it further enacted, That the board of directors shall make all by-laws necessary for conducting the business of the company, which by-laws shall at all times be accessible to persons transacting business with them. The said directors shall have power by a vote of a majority of their number at any meeting of the board to change the name of the said corporation, and the location of its principal office, or either, but no such name thus adopted shall be deemed valid until a truly certified certificate of its adoption shall be filed with the secretary of state as above provided in case of an increase of stock. The said company shall have, hold and enjoy all the rights, powers, privileges and immunities hereby granted, and such other powers and privileges as belong to corporations by the laws of this State. The directors shall have power to require payment of the amount remaining unpaid on the stock of said company, at such times and in such proportions as they shall think proper, the said assessment to be made as the by-laws of said company shall direct.

SECTION 10. Be it further enacted, That this act take effect and be in force from and after its passage.

119 Passed the house of representatives March 25, 1872.

JOHN R. LYNCH,
Speaker of the House of Representatives.

Passed the senate March 7th, 1872.

JAS. BENNETT,
President of the Senate.

Approved April 2nd, 1872.

R. C. POWERS, *Governor.*

STATE OF MISSISSIPPI,
OFFICE OF SECRETARY OF STATE,
JACKSON, MISS., *June 28th*, 1894.

I, George M. Govan, secretary of state, do certify that the act hereto attached entitled "An act supplemental to and amendatory of an act which passed the senate March 7th, 1872, and passed the house of representatives March 25, 1872, entitled 'An act to incorporate the Mississippi Valley Company,'" not yet approved, approved April 2nd, 1872, is a true and correct copy of the original on file in this office.

Given under my hand and the great seal of the State of Mississippi, this 28th day of June, 1894.

GEO. M. GOVAN,
Secretary of State.

STATE OF MISSISSIPPI,
Copiah County.

In the Chancery Court of said County, —— Term, 1878.

THE BILL OF COMPLAINT OF THE MISSISSIPPI MILLS, a Manufacturing Corporation of the State of Mississippi, Existing under that Name by Virtue of a Charter Granted by the Legislature of said State, with its Factories and Domicile in the County Aforesaid, Complainant,

against

WILLIAM W. COOK, Tax Collector of said County, Defendant.

1. The complainant states and shows to the honorable court that the Mississippi mills was incorporated under that name by an act of the legislature of the State passed July 13th, 1871, that certain property which had been owned by a corporation known as the Mississippi Manufacturing Company was sold in proceedings in bankruptcy, against said company, and purchased by certain parties who procured said act of incorporation by which it was provided that the property so purchased should in part
120 represent the capital stock of the corporation at the estimated value, and divided into shares of $1,000 each, and allotted to the several owners of the property so purchased in proportion to their interest therein, and that said owners should subscribe and pay 50 thousand dollars in like proportions, divided into shares of

1,000 dollars, and stock certificates were to be issued to each of said owners according to their interest in the property aforesaid, and subscriptions of money thus making a capital of 250 thousand dollars of paid-up stock. By a provision of the charter aforesaid, the capital stock of said corporation might be increased to 500 thousand dollars; that the property so purchased and converted into stock consisted of an establishment for the manufacture of cotton and other cloth, with other minor kinds of manufacture, to wit, buildings, machinery, and timbered lands surrounding and adjacent to the factory, and subsidiary thereto, and on part of which were erected the various structures needed for the business of manufacturing.

2. Under the charter aforesaid, the corporation, complainant, was duly organized and commenced business, but by an accidental fire, in the year 1873, its buildings and machinery were destroyed and its operations arrested. Before the happening of that event, to wit, in the year 1872, the legislature of the State had by a general law, passed an order to invite and stimulate manufacturing enterprise in the State, and to diversify and multiply its industries, declared that the State hereby agrees with any and all manufacturing companies in this State, whose capital stock shall not be less than ten thousand dollars paid in, and not in operation before the passage of this act that all taxes to which said company or companies shall be subject for the period of ten years, should be appropriated and set apart and shall be applied to the payment of the debts and liabilities which any of said companies may have incurred in the construction of factories or for money borrowed by any manufacturing company, to construct buildings or in paying debts incurred by such companies in constructing or purchasing the same, there are provisions in said act to carry the same into effect, by means of an assessment, to fix the amount of the tax, and a receipt for said taxes as though paid, but no payment in fact was to be made and in lieu of such payment, the company was required to show by affidavit, that the amount assessed had been expended in the manner, or for the purpose designated by the said act; this exemption, complainant is advised it was in spirit and in fact, was to cease when the dividend accruing should exceed 4 per cent. after payment of debts and outlays for machinery, structures, etc.

121 3. The complainant further states that the destruction by fire, as before stated, of the machinery and structures, the essential constituents of the enterprise in which the corporation had embarked while it did not put an end to the existence of the corporate body, arrested its operation and crippled the resources of the corporators, and at the time when the then stockholders were in doubt about the feasibility of any attempt by them to renew the enterprise thus destroyed, the legislature passed the act of 1873, by which the privileges and benefits of the said act of 1872 were extended to and conferred upon the complainant, and the complainant avers that said act was passed to induce a renewal of the enterprise, the utility of which was manifest to that body; and the complainant further avers and charges that the corporators, the then stockholders, were so crippled by the casualty before mentioned, that they

were unable and unwilling to replace the machinery and structures destroyed, and that the present stockholders, relying upon the act of 1873 as entitling them to the benefit of the said act of 1872, in respect to the exemption from taxes, and with a view to start the enterprise anew, purchased from the corporators of the Mississippi mills the remnant of property left by the fire which consisted almost entirely of land, constituting the site of the destroyed factory, with the surrounding and adjacent lands, the values of which depended on the locality and its adaption to the purposes of a factory by its abundance of timber for fuel and lumber for the principal enterprise, and in order to supersede the necessity of a new charter, they took from the former stockholders assignments of their stock, except as to Wm. Oliver, who retained his stock, and became a member of the reconstructed corporation, as representing the value of the remnant of property left, and thus becoming stockholders, continued the existence of the organization, being content with the charter existing and the amendment or addition thereto made by the act of 1873, which act was by the new stockholders accepted as part of said charter.

4. The complainant further states and charges that under and after the passage of the said act of 1873, with the guarantee against taxation, except according to the terms of the said act of 1872 the new stockholders, together with Wm. Oliver, of the Mississippi mills, created and put in operation the now existing manufacturing establishment, having purchased the machinery and erected the structures as they now exist by an expenditure of money to that end; that the machinery now in operation is of much greater capacity and the structures larger and more numerous, and that what now exists, and has been put in operation is a manufacturing establishment of the character
122 provided for in the said act of 1872, being a manufactory of cotton and woolen goods with other factories subsidiary to it; that in substance and in fact, and in all except the name and charter organization, it is a manufactory not in operation prior to the passage of said act, and entitled to its benefits, and complainant, is advised even without the express grant in the act of 1873, and although it may not be strictly proper as matter of pleading to make the statement, complainant, nevertheless, avers that the existing establishment is not only a new creation since the date of the act of 1872, but is a realization of the fruits anticipated by its framers. Its capital stock has been increased by about one hundred thousand dollars in paid-up subscriptions, with which machinery has been purchased, and buildings erected. The corporation now employs more than 500 operatives of whom 400 are women and children, and to render these comfortable, and contented, the corporation had erected at great expense cottages and tenements for them on the grounds adjacent to the factory, thus creating a village with its social benefits and with opportunities for education and moral and religious training.

5. The complainant further states that the original corporators purchased a body of land adjacent to the manufactory as it then existed, having in view the needed supply of fuel and lumber in

their principal business and not for speculation or profit otherwise, and — to this land by their purchase aforesaid and on which they have erected buildings for the factory offices for the care of the officers of the corporation, and tenements for the operatives, and building- for other purposes, and they have added a small outlaying tract of land, but not by way of investment; the complainant appends herewith a statement of the lands including that on which the factory proper, or its structures for machinery are erected, which list will comprise the property assessed to the corporation in the county of Copiah and which has been by the collector treated as exempt, on the corporations making the affidavit, and showing required by the act of 1872, which said corporation has been able truthfuliy to make, as to the taxes and also as to the yield of dividend to the stockholders,—all the said list of lands are as follows, to wit: The W. ½ sec. 3, township 8, range 8 east; all less N. W. ¼ of N. W. ¼ sec. 4, township 8, range 8 east; S. ½ S. W. ¼ and S. W. ¼ S. E. ¼, and S. ½ N. ½ S. E. ¼, and N. E. ¼ N. W. ¼ S. E. ¼, section 28, township 9, range 8 east; S. E. ¼ S. E. ¼, section 32, township 9, range 8 east, E. ½ and E. ½ of W. ½ less six acres section 33,
123 township 9, range 8 east; all less 55 acres in N. E. ¼ of N. E. ¼ and N. W. ¼ N. E. ¼, east of railroad, and S. E. ¼ of S. E. ¼, section 34, township 9, range 8 east; N. W. ¼ S. W. ¼ and S. W. ¼ N. W. ¼ section 35, township 9, range 8 east; S. E. ¼ N. E. ¼ sec. 7, T. 9, R. 9 east, N. W. ¼ and W. ½ N. E. ¼, and N. E. ¼ N. E. ¼ and N. ½ S. W. ¼ and S. E. ¼ S. W. ¼, and S. W. ¼ S. W. ¼, section 8, township 9, range 9 E.; N. W. ¼ N. W. ¼ sec. 17, township 9, range 9 east; N. E. ¼ of N. E. ¼ sect. 18, township 9, range 8 E.; S. W. ¼ sect. 29, township 9, range 8 east; N. ½ N. W. ¼ and S. E. ¼ S. W. ¼ sect. 32, township 9, range 8 east; W. ½ N. E. ¼ and N. W. ¼ S. E. ¼ sec. 3, township 8, range 8 east. In the town of Wesson, and in section- 6, 3 and 4, township 8, range 8 east, and sections 33 and 34, township 9, range 8 east.

The following town lots are not owned by the Mississippi mills, of the above-described lands to wit: Lot of W. H. Hallam, of Mrs. Hartwell, John Sartain, Wm. Oliver, McPherson, two lots Wimberly and Rea, and lot Mr. R. E. Ray.

The town lots in this list mentioned as not the property of the Mississippi mills, *is* not intended to be included in this suit, as said complainant has no interest in them or *no*thing to do with them. The complainant further states that the real estate originally purchased by the corporators as part of the assets of the Mississippi Manufacturing Company, consisted of the site of the factory buildings proper, and lands valueless for other than purposes immediately connected with the main business. The machinery was, and is now, impelled by steam, and fuel supplying the place of water power, and lumber for structures, and other manufactories carried on by the company then, and *to* the complainant now, were indispensable, the factory is located on wild land, distant from towns and cities. In the condition of the country it was as necessary to provide for lodging the operatives as it was to provide shelter for the machinery and the real estate aforesaid attached to the factories

was purchased and is used to supply these needs; that the act of incorporation recognized the property as pertaining to the business and authorized its conversion into capital stock, and it so exists as such stock at this time; so that it is not only property of the corporation, but property necessary to its operations, not purchased or used for profit, or as an investment, but for uses immediately connected with the main business and so employed. The complainant further states and charges that the Mississippi mills is yet largely indebted for purchases of machinery, for its manufacturing business, that its entire increase has been absorbed in such pur-
124 chases, and in the erection of the needed buildings; that no dividend has been earned, and, therefore, no dividend declared; that the increase to the stockholders consists entirely in added machinery, and in the enlarged capacity of the mills; that the general stagnation of trade, common to the whole country has affected it, and it has not been, and is not able to declare a dividend, and that its profits over and above the expenses of operating the mills, and the payment of its debts incurred in the purchase of machinery *has* not reached four per cent. and the full amount of the current year's taxes has been expended in the manner designated by the act of 1872.

And the complainant further avers that on the 14th day of December, 1877, it presented through its secretary and treasurer, Wm. Oliver, the affidavit required by the said act of 1872, to the collector, the said defendant, and demanded his receipt for the amount of the taxes assessed on the property of the corporation, but the said collector refused to give such receipt, or any receipt for the taxes of any portion of said property, unless upon the payment in cash of the tax collector's commissions and the commissions of the assessor in cash, or legal warrants for the assessment and collection of the taxes which would be due on the capital stock, the machinery, manufactured goods and the buildings in which said machinery is located, or within the necessary enclosure, around said buildings, the said defendant alleges that he will accept the affidavit aforesaid, in satisfaction of the tax due on the above-mentioned property the land which he alleges as exempt from taxation, being as follows: Five acres more or less, contained within the enclosure around the Mississippi mills, and the buildings therein situated, containing the machinery of the Mississippi mills, the same exempt under the act of 1877 of the legislature of Mississippi, the same being the enclosure in the town of Wesson, in which the Mississippi mills are located, and that the taxes due on all the other lands and property assessed to the Mississippi mills, must be paid as other taxes are paid, and that he would not receive said affidavit for the same.

And moreover the complainant charges that the said defendant insisted that the complainant should pay the taxes at the assessed value on all the property of the corporation before described and set forth in the list aforesaid, except the machinery and the buildings and ground on which they stand in which the machinery is placed or in operation and the paid-up capital stock, and manufactured goods; that the property excepted comprises almost the entire

real estate of the corporation, taking in the ground on which the tenements of the operatives are located, and on which stand other buildings and storehouses in which no machinery is placed
125 or operated, including the offices of the company, clerks and servants, and of its officers, this excepted property, complainant avers, was assessed with reference to its connection with the factories of the corporation and as a necessary adjunct to it, and the existence of the factory imparted to this property a value which it possesses for no purposes save those connected with the factories, being wildwood land principally valuable for lumber and wood. It was assessed very high at $75.00 per acre, so that the amount of taxes required to be paid for it is very large, to wit, about $4,728.68.

And the complainant further states and charges that the said defendant, the tax collector aforesaid, declared that the refusal of the complainant to pay the taxes so demanded, and the commissions aforesaid would be treated as a default by him and he has advertised and threatens to subject to sale, and will sell the real estate of the complainant on which the taxes are demanded, to be paid, any property exempt or not owned by the company for the commissions and taxes aforesaid, unless restrained by the order of this honorable court. The complainant states, as he is advised, that any such sale would be void, but it would, nevertheless, create an apparent title and give rise to litigation, and embarrass the title to the property. The complainant further states that the said collector found- his authority, or rather his pretended authority for his exaction of the taxes and commissions aforesaid, which latter are taxes under a very thin disguise, upon an act passed by the legislature of 1877, which act by the first and other sections thereof undertakes to repeal and limit the provisions of the said act of 1872. The complainant, however, charges expressly that the existing manufacturing establishment known as the Mississippi mills, was created and put in operation since the act of 1872 and since the act of 1873, making the provisions of the former act part of the charter of the Mississippi mills; that the machinery operated, and the structure containing and supporting *has* been purchased and brought into the State, and the structure built on the faith of said acts, and the expenditures very large and onerous made on the faith of said acts, and it insists that the said acts, as to it, are irrepealable, and subject to no modification without its consent, in so far as such modification may materially affect the benefits conferred by them; that the exemption from taxation as contained in the act of 1872, is part of the charter of the Mississippi mills, with all the effect as though it had been originally inserted in it, and on the faith of said act and charter, the present stockholders of the Mississippi mills made the entire expenditure by which the existing manufacturing establishment was created.

The complainant further states that said act of the legislature of 1877, as he is advised, and so advised, expressly charges
126 is in violation of the Constitution of the United States, because an act or law passed to impair the obligation of a contract,

and is therefore void, so far as the complainant is concerned, and to execute it by a forced sale of the property of the complainant, a great wrong, wherefore, the complainant prays that the said W. W. Cook, the defendant be summoned to appear as a defendant to this suit, and required to answer this bill and in the meanwhile, in order to arrest this wrongful and illegal proceeding, the complainant prays that an injunction may issue enjoining and restraining the said defendants from collecting or attempting to collect the taxes and commissions so demanded as aforesaid, by sale of the complainant's real estate or otherwise, until the further order of the court, and on final hearing of the matters of this bill, the complainant prays that said injunction be made perpetual, and that the said collector, the defendant, or his successor in office, is directed and required to execute and deliver to the complainant a proper receipt for the taxes aforesaid in accordance with the terms of the act of 1872 and 1873 without regard to the provisions of the said act of 1877, and for such other and further relief as the case made shall justify, and as in duty bound, etc.

In verification of the facts set forth in the foregoing, the said Mississippi Mills affixes hereto its corporate seal with the signature of Wm. Oliver, its secretary and treasurer.

[SEAL.] WM. OLIVER,
Sec'l'y & Treasurer.
HANNIS & GEORGE AND
HANNIS & MILLER,
Sol'rs for Compl't.

STATE OF MISSISSIPPI, }
Adams County. }

Pleas before the Honorable Claude Pintard, chancellor of the fourth chancery court district of the State of Mississippi, at a term of court begun, convened, and held at the court-house, in the city of Natchez, county of Adams and State of Mississippi, on Monday, the sixth day of March, in the year of our Lord one thousand eight hundred and ninety-three.

THE NATCHEZ, JACKSON & COLUMBUS RAILROAD COMPANY ET AL. }
vs.
JAMES W. LAMBERT, Sheriff and Tax Collector of Adams County, Miss. }

Be it remembered that heretofore, to wit: on the 9th day of
127 January, A. D. 1893, the complainants, by their solicitors, Will. T. Martin and Yerger and Percy, filed their certain bill of complaint with Exhibits "A," "D," "E" and "H," thereto in the office of the chancery clerk, the said bill and exhibits being in words and figures, as follows, to wit:

STATE OF MISSISSIPPI,
Adams County.

In Chancery, to March Term, 1893.

THE NATCHEZ, JACKSON & COLUMBUS RAILROAD COMPANY and The Yazoo & Mississippi Valley Railroad Company, Corporations Duly Incorporated under the Laws of the State of Mississippi and Now Existing and Having Their Domicile in said State, Complainants,

vs.

JAMES W. LAMBERT, Sheriff and Tax Collector of Adams County, Mississippi, a Citizen of said County and State, Defendant.

To the honorable chancery court of Adams county, Mississippi:

Complainants show to the court that on the 21st day of August, 1870, by act of the legislature of said State, duly enacted and approved, as required by the laws of said State, the Natchez & Jackson Railroad Company was duly and legally incorporated, and by said act of incorporation, was granted authority and empowered to construct and finally complete a single or double railroad, or way, from the city of Natchez, in said county of Adams, to the city of Jackson, in the county of Hinds, in said State. That on the 23rd day of February, 1872, by acts of the legislature of said State, approved and enacted as required by laws of said State, the charter of the Natchez & Jackson Railroad Company was so amended as to authorize said company at its pleasure to adopt the name and style of the Natchez, Jackson & Columbus Railroad Company, and to build such branches and feeders, as might be deemed practicable or necessary, and to construct its main line from Jackson to Columbus, Mississippi; and that by resolution of the board of directors of said Natchez & Jackson Railroad Company, duly passed, it was determined to accept the privilege granted to that company to change its name to that of the Natchez, Jackson & Columbus Railroad Company, and the change was made and acted on.

That on the 20th day of July, A. D. 1870, by act of the legislature of said State, duly enacted and approved, according to law,
128 the Mobile and Northwestern Railroad Company was incorporated and in the charter of the last-named company, there is, among other things, section 21, which is in the following words, to wit:

"SECTION 21. Be it further enacted, That in consideration of the construction of the railroads provided for herein, and of the great benefit which the State will receive in the development of its agricultural resources, by means of said railroad, as works of internal improvement, and also of the increased value which will thereby be added to the property of the State, thus enabling the State to greatly increase its revenue without additional or burdensome taxation upon the people, the State hereby agrees with said company—which agreement is irrepealable, that all taxes to which said company

shall be subject for the period of 30 years, are hereby appropriated and set apart, and shall be applied to the payment of the debts and liabilities which the said company may have incurred in the construction of said road, or for money borrowed by said company upon lands, or otherwise, to be used in constructing said road, or paying debts incurred by said company in constructing the same, and it shall be the duty of the tax collector, in every county, in each and every year, to give to said company a receipt in full for the amount of said taxes, upon receiving from the company an affidavit, made by the president or cashier of said company that the amount of said taxes have actually and in good faith been paid and applied by said company, during the year, in payment of the debts incurred, or money borrowed as aforesaid and which receipt shall be in full of all taxes, county, State and municipal, to which the said company shall be subject; provided, however, that whenever the profits of said company shall enable it to declare and pay to the stockholders an annual dividend of eight per cent. on its capital stock, over and above the payment of its debts and liabilities, then the appropriation of the taxes aforesaid shall cease, and said taxes shall be paid by said company to the tax collector, to be by him paid over as required by law."

That on the 8th day of August, A. D. 1870, by an act of the legislature of said State, enacted and approved as by law required, supplemental to the acts of incorporation of certain railroad companies, the provisions of said section 21 of the act incorporating the said Mobile and Northwestern Railroad Company, were made to apply to the Natchez, Jackson & Columbus Railroad Company, the charter of which was so amended by said act of March 5th, 1878, as to confer upon said Natchez, Jackson & Columbus Railroad Company, all the rights, privileges, immunities and franchises theretofore granted or intended to be granted by, and embraced in the 21st section of said act, entitled: "An act to incorporate the
129 Mobile and Northwestern Railroad Company," and by said act, all taxes, State, county and municipal theretofore levied and assessed, or thereafter to be levied and assessed, upon the property of the Natchez, Jackson & Columbus Railroad Company, were by the State of Mississippi, and by the provisions of said act, appropriated and set apart, and were to be applied in the manner and for the purposes mentioned in the said 21st section of the act, incorporating the Mobile & Northwestern Railway Company, and that said appropriation and application was to continue for 30 years, from the 8th day of August, A. D. 1870.

That on the 19th day of February, A. D. 1890, the legislature of the State of Mississippi, by an act of that date enacted and approved according to the laws of said State, authorized the Natchez, Jackson & Columbus Railroad Company to sell all or any part of its railroad and other property situated in the State of Mississippi, together with all franchises, rights, privileges and immunities unto said company belonging.

Complainants further show, that on the 18th day of August, 1881, the Tennessee Southern Railroad Company was duly and regularly

incorporated under and by virtue of the laws of the State of Tennessee. That on the 8th day of August, 1870, the Vicksburg & Memphis Railroad Company; and on the 9th day of March, 1882, the New Orleans, Baton Rouge, Vicksburg & Memphis Railroad Company *was* duly and regularly incorporated, under and by virtue of the laws of the State of Mississippi, and that on the 17th day of September, 1881, the New Orleans & Mississippi Valley Railroad Company was duly and regularly incorporated, under and by virtue of the laws of the State of Louisiana.

Complainant further show, that by an act of the legislature of the State of Mississippi approved March 3d, 1882, entitled "An act to authorize the Memphis & Vicksburg Railroad Company, and the Mississippi Valley & Ship Island Railroad Company, to effect a consolidation," the Memphis & Vicksburg and the Mississippi Valley and Ship Island Railroad Companies were authorized and empowered to consolidate with each other, or any other railroad company, or companies, that had been incorporated under the laws of the State of Mississippi, or any other State, and so that all companies so consolidated, should be merged into and become one company; and by said act it was provided, that the company so formed by said consolidation, should be deemed and held to be a corporation created by the laws of the State of Mississippi, and should have, enjoy and possess all the rights, ways and privileges, franchises, property, grants and immunities which at the time of the passage of the act were possessed by the companies that might enter into such consolidation, as fully as though the same were conferred specifically in said act, and to that end, the charters of the said consolidated companies should be taken and held as part of said act authorizing the Memphis & Vicksburg Railroad Company and the Mississippi Valley and Ship Island Railroad Company to effect a consolidation.

That subsequent to the passage of said last-named act, an amendment thereto was passed by the legislature of the State of Mississippi, which amendment is entitled: "An act to amend an act entitled An act to authorize the Memphis & Vicksburg Railroad Company and the Mississippi Valley and Ship Island Railroad Company to effect a consolidation," approved March 3d, 1882. That said amendatory act was approved March 10th, 1882, and authorized and empowered the Memphis & Vicksburg Railroad Company and any other railroad company, or companies incorporated under the laws of this State, to consolidate in the manner, and upon the terms and conditions, and with rights and privileges and immunities in the said act mentioned with each other, or any other railroad company or companies incorporated, or organized under the laws of any other State or States, and that such consolidation might be so effected, whether the Mississippi Valley & Ship Island Railroad became a party to such consolidation or not.

That under and by virtue of the statutes of the respective States of Mississippi, Tennessee, and Louisiana in such cases made and provided, and in consideration of the mutual undertaking-, covenants and agreements then entered into by said companies, the

Tennessee Southern Railroad Company, created as aforesaid and then existing under — by virtue of the laws of the State of Tennessee, and the Memphis & Vicksburg Railroad Company, a corporation created as aforesaid, and then existing under and by virtue of the laws of the State of Mississippi; the New Orleans, Baton Rouge, Vicksburg & Memphis Railroad Company, a corporation created as aforesaid, and then existing under and by virtue of the laws of the State of Mississippi; and the New Orleans and Mississippi Valley Railroad Company, a corporation created as aforesaid and then existing under and by virtue of the laws of the State of Louisiana, entered into and effected the consolidation of each of said companies into one railroad company, to be thereafter known as the Louisville, New Orleans and Texas Railway Company, and that into said consolidated company has merged and consolidated the several capital stocks, franchises, grants, immunities, privileges, properties, rights of way and all property, real, personal, and mixed of the several companies as hereinbefore mentioned, as entering into said consolidation as shown by a certificate of consolidation
131 filed herewith, and marked "Exhibit A" and prayed to be taken and considered as part of this bill.

That in pursuance of said act of February 10th, 1890, hereinbefore referred to, the said Natchez, Jackson & Columbus Railroad Company did, on the 5th day of March, 1890, by deed duly executed and delivered, sell to the Louisville, New Orleans and Texas Railway Company, all the railroad property situated in the State of Mississippi, and particularly the line of railroad constructed by the said Natchez, Jackson & Columbus Railroad Company, and running from the city of Natchez, in the county of Adams, to the city of Jackson in the county of Hinds, in the State of Mississippi, together with all rights, powers, privileges and immunities possessed by said Natchez, Jackson & Columbus Railroad Company, as to said property so sold as aforesaid, and in which rights, powers, privileges and immunities, complainants charge was embraced the right to have the president or cashier of the Louisville, New Orleans & Texas Railway Company, or its successors or assigns make the aforesaid affidavit as required by sec. 21 of the act creating and incorporating the Mobile & Northwestern Railroad Company, showing the payment of the taxes then due or thereafter to become due on the property, so sold as aforesaid, by the Natchez, Jackson & Columbus Railroad Company, and the payment of the debts incurred by the said Natchez, Jackson & Columbus Railroad Company, and used by it in the construction of the railroad built by it from Natchez to Jackson, Mississippi, and also the right to have said taxes applied to the payment of said debts, so incurred in the construction of the railroad as aforesaid.

Complainants aver that said sale and conveyance to said Louisville, New Orleans and Texas Railway Company by said Natchez, Jackson & Columbus Railroad Company was made to said Louisville, New Orleans and Texas Railway Company subject to an indebtedness of the selling company, as evidenced by its bonds of one million two hundred and fifty thousand dollars, and that said

indebtedness was incurred by the said Natchez, Jackson & Columbus Railroad Company in the construction of its said railroad from Natchez to Jackson, and the said sum of one million, two hundred and fifty thousand dollars was used in the construction of its said road, by said Natchez, Jackson & Columbus Railroad Company; the road so constructed being that sold as aforesaid, to the said Louisville, New Orleans and Texas Railway Company, and that by section 25 of an act of the legislature of the State of Mississippi, entitled "An act to incorporate the New Orleans, Baton Rouge,
132 Vicksburg & Memphis Railroad Company, approved March 9th, 1882," the Louisville, New Orleans and Texas Railway Company was authorized to purchase the property, rights, powers and immunities of the Natchez, Jackson & Columbus Railroad Company from it, as hereinbefore set forth.

Complainants further show, and aver, that under charter granted to it, the Natchez, Jackson & Columbus Railroad Company constructed in Adams county, Mississippi, 14 and one hundred and twenty-eight one-thousandths miles of railroad and that these fourteen and one hundred and twenty-eight one-thousandths miles of railroad, *was* a part of that property included in the sale and conveyance by the Natchez, Jackson & Columbus Railroad Company to the Louisville, New Orleans and Texas Railway Company as hereinbefore set forth.

Complainants state and expressly charge that in the transfer and sale as aforesaid, by the Natchez, Jackson & Columbus Railroad Company to the Louisville, New Orleans and Texas Railway Company, the franchises possessed by the Natchez, Jackson and Columbus Railroad Company of being a corporation *was* not sold and did not pass to the Louisville, New Orleans and Texas Railway Company by the sale aforesaid, and that the corporate existence of said Natchez, Jackson & Columbus Railroad Company, since said sale to the Louisville, New Orleans and Texas Railway Company still exists and is intact and in full force, and that the stockholders of the Natchez, Jackson & Columbus Railroad Company, since said sale to the Louisville, New Orleans and Texas Railway Company, have held meetings and elected officers as provided in the charter of that company, and that said company has now a full complement of officers, as required by the charter thereof. That the action of the legislature in extending the provisions of the 21st section of the act incorporating the Mobile & Northwestern Railroad Company to the several railroad companies named in the act of 1870, and hereinbefore set forth, was an inducement held out by the State of Mississippi, to the incorporators named in the charters of said companies and their associates to invest money in the State of Mississippi, and under said charters to construct railroads therein; that the inducement so held out by said State to the Natchez, Jackson & Columbus Railroad Company was accepted by said company, and acted on in good faith, and under its charter and the several amendments thereof, that company constructed a railroad in the State of Mississippi, from Natchez to Jackson, 93¾ miles in length, and that

thereby the charter originally incorporating the Natchez,
133 Jackson & Columbus Railroad Company and the several amendments thereto, and the provisions, privileges, and immunities contained in said 21st section of the act incorporating the Mobile & Northwestern Railroad Company and made part of the charter of the Natchez, Jackson & Columbus Railroad Company as aforesaid, became a contract between the State of Mississippi and the Natchez, Jackson & Columbus Railroad Company, which is irrepealable and inviolable.

Complainants further state that on the faith of said contract and the provisions of the charter incorporating the Natchez, Jackson & Columbus Railroad Company, and the several amendments thereto, and the privileges granted by, and the provisions contained in said 21st section of the act incorporating the Mobile and Northwestern Railroad Company, the Natchez, Jackson & Columbus Railroad Company invested its capital in the construction of the line of said road, from the city of Natchez to the city of Jackson, as aforesaid, and has, since the construction of said railroad, employed its capital in the operation and maintenance thereof, relying on said contract, and reposing in the belief that the taxes to which it was subject would be appropriated, by the State of Mississippi, to the payment of its debts and liabilities, incurred in the construction of said railroad, and as provided for by said section 21st of the act incorporating said Mobile & Northwestern Railroad Company, and that said contract and agreement on the part of the State of Mississippi, went far beyond the mere privilege of an exemption from taxation, the State having solemnly agreed in said contract, and by the acts of the legislature aforesaid, that if said company should construct a railroad as provided for in its charter and the amendments thereto and should incur debts and liabilities in so doing, that unless the earnings of said company should entitle it to declare and pay to its stockholders a dividend of eight per cent. upon its capital stock, over and above its liabilities, that the taxes to which it was subject for the term of 30 years from the date of its incorporation, in 1870, should be appropriated by the State of Mississippi, to the payment of the debts and liabilities incurred by the company in building said road.

Complainants further show, and state, that, by the sale and conveyance of the said road from Natchez to Jackson, Miss., by the Natchez, Jackson & Columbus Railroad Company to the Louisville, New Orleans and Texas Railway Company, together with the privileges and immunities thereunto belonging, the Louisville, New Orleans and Texas Railway Company became entitled to have the taxes on the property, so sold to it as aforesaid by the Natchez, Jackson & Columbus Railroad Company, applied to the payment of the debts incurred by the Natchez, Jackson & Columbus
134 Railroad Company in the construction of said railroad so sold, as aforesaid.

Complainants further show, that on the 17th day of February, 1882, by an act of the legislature, duly enacted and approved as required by the laws of the State of Mississippi, the Yazoo & Mis-

sissippi Valley Railroad Company was incorporated, and that it is now an existing corporation under the laws of the said State, having its domicile therein; that on the 25th day of October, 1892, the Louisville, New Orleans and Texas Railway Company was merged into and consolidated with the Yazoo & Mississippi Valley Railroad Company, and that by said merger and consolidation, the capital stock, franchises, grants, privileges, immunities, properties, rights of way and all property, real, personal and mixed, theretofore belonging to the Louisville, New Orleans and Texas Railway Company, *was* merged into, and became the property of the Yazoo & Mississippi Valley Railroad Company, all of which will fully appear by reference to a certified copy of said act of consolidation, to be filed with bill and marked "Exhibit C," and prayed to be taken as a part of this bill. That the said merger and consolidation between the said railroad companies, last named, was authorized by the charters of each of said companies, and was duly, regularly and legally made and entered into by said companies.

Complainants charge that by reason of said merger and consolidation last above named, the Yazoo & Mississippi Valley Railroad Company thereby became entitled to, and was immediately upon said merger and consolidation, possessed of all the rights, powers, privileges, and immunities theretofore belonging to said Natchez, Jackson & Columbus Railroad Company, and the said Louisville, New Orleans and Texas Railway Company, and in which said rights, powers, privileges and immunities, complainants charge, was embraced the right to have the president or cashier of the Yazoo & Mississippi Valley Railroad Company, or its successors or assigns, make the affidavit required by section 21 of the act incorporating the Mobile & Northwestern Railroad Company showing the payment and application of the taxes then due, or to become thereafter due on the property sold, as aforesaid, by the Natchez, Jackson & Columbus Railroad Company to the Louisville, New Orleans and Texas Railway Company, to the payment of the debts of the Natchez, Jackson and Columbus Railroad Company, incurred by it and used by it in the construction of the railroad from Natchez to Jackson, Mississippi, and to have said taxes applied to the payment of the debts and liabilities incurred by said Natchez,
135 Jackson & Columbus Railroad Company in the construction of said railroad from Natchez to Jackson, Mississippi.

Complainants further show and charge that in the years 1891 and 1892, the Natchez, Jackson & Columbus Railroad Company, and the Louisville, New Orleans and Texas Railway Company, actually and in good faith, paid and applied the amount of taxes to which said Natchez, Jackson & Columbus Railroad Company was subject, and to which the said Louisville, New Orleans and Texas Railway Company was subject, on the property purchased by it from the Natchez, Jackson & Columbus Railroad Company for each of said years, 1891 and 1892, in the payment of the debts and liabilities incurred by said Natchez, Jackson & Columbus Railroad Company in the construction of said railroad from Natchez to Jackson, Mississippi, and in the said county of Adams, to be used,

and which was used in the construction of said road, or in paying debts incurred in constructing the same, and that the profits of neither the Natchez, Jackson & Columbus Railroad Company, nor of the Louisville, New Orleans and Texas Railway Company, nor of the Yazoo & Mississippi Valley Railroad Company have been sufficient to enable the said companies, or either of them, to declare and pay to the stockholders thereof, an annual dividend of eight per cent., or any per cent., on the capital stock of said companies, or either of them, over and above the payment of the debts and liabilities of said companies, and each of them; and that complainants have caused to be made by the proper officer of each of the said companies, affidavits setting forth said facts, and in strict compliance with the requirements of section 21 of the act incorporating the Mobile & Northwestern Railroad Company hereinbefore fully set forth, and have presented said affidavits to the defendant in this suit, who is the sheriff and tax collector of Adams county, Mississippi, and have demanded of him as such collector, sheriff and tax collector, a receipt in full for all taxes, State, county, and municipal to which said companies, or either of them, were subject for the years 1891 and 1892, on property situated in said county of Adams, Mississippi; and that notwithstanding the payment and application of the amount of taxes to the debts and liabilities of the Natchez, Jackson, and Columbus Railroad Company, as hereinbefore set forth, and the making and presentation of the affidavits, as hereinbefore set forth, and the demand for the receipt in full for all taxes to which the companies heretofore mentioned were, or are subject in said county of Adams, for the years 1891 and 1892, the said defendant not regarding the rights of complainants, refused, and still refuses to comply with said demand.

136 The following is the amended bill of the complainants and is embraced within the following parenthesis, drawn with red ink. The portion of this transcript within the red-ink-line parenthesis contains the amendment to bill filed by complainants, February 24th, 1893.

Attest: ALLISON H. FOSTER, *Clerk.*

Chancery Court, Adams County, Mississippi.

THE NATCHEZ, JACKSON & COLUMBUS RAILROAD COMPANY and The Yazoo and Mississippi Valley Railroad Company
vs.
JAMES W. LAMBERT, Sheriff and Tax Collector.
} No. 1216.

Amendment to Bill.

To be inserted at the end of line 29, page 19, of the bill herein.

"Complainants would further show that after the purchase of the property of the Natchez, Jackson & Columbus Railroad Company by the Louisville, New Orleans and Texas Railway Company as hereinbefore stated and as shown by the deed from the said Natchez,

Jackson and Columbus Railroad Company to said Louisville, New Orleans and Texas Railway Company, dated —— 28th, 1890, that the line of railroad purchased from said Natchez, Jackson & Columbus Railroad Company by said Louisville, New Orleans and Texas Railway Company, running from the city of Natchez, in the county of Adams, to the city of Jackson, in the county of Hinds, of the State of Mississippi, was operated and maintained as a separate division, and that the amounts of the receipts, expenditures and disbursements of said division of railroad running from said city of Natchez to said city of Jackson as aforesaid, were so kept by the officers of the said Louisville, New Orleans and Texas Railway Company as to enable them at all times to ascertain and furnish a full, complete and accurate statement of the receipts received from the operation and maintenance of said division of railroad; and the disbursements and expenditures made by said company in the maintenance and operation of said division of railroad, and of the gross and net earnings of said line of railroad constituting said division and running from the city of Natchez to said city of Jackson; and that at the time of purchasing said line of railroad running from the city of Natchez to the city of Jackson as aforesaid, from the said Natchez, Jackson and Columbus Railroad Company, and at the time of the making and ordering and filing the copies of the affi-
137 davits herewith filed as exhibits to this bill of complaint and showing the application of taxes, to which company was subject, to the payment of the debts and liabilities incurred by said Natchez, Jackson & Columbus Railroad Company in the construction of said road running from the city of Natchez to said city of Jackson as aforesaid, there was a contract existing between the State of Mississippi and the said Natchez, Jackson and Columbus Railroad Company, and said Louisville, New Orleans and Texas Railway Company, authorizing each of said companies and empowering them under said contract to apply to the payment of the debts and liabilities which said companies had incurred in the construction of railroads in the State of Mississippi, all taxes to which said companies, or either of them were subject; and that the taxes sought to be collected by defendant on the line of railroad from Natchez to Jackson, sold as aforesaid by the Natchez, Jackson & Columbus Railroad Company to the Louisville, New Orleans and Texas Railway Company had, prior to the attempt of defendant to collect said taxes, been applied by complainants as they were authorized by law to do, to the debts incurred by the Natchez, Jackson & Columbus Railroad Company in the construction of the line of railroad from the city of Natchez to the city of Jackson, sold as aforesaid by the Natchez, Jackson & Columbus Railroad Company, to the said Louisville, New Orleans and Texas Railway Company."

Agreed, that this amendment shall now be filed to take effect as if it had been embraced in the original bill herein.

Natchez, February 24, 1893.

K. PALMER LANNEAU,
Sol. for Def't.

Complainants charge that defendant, as sheriff and tax collector of said Adams county, is and was by law required to accept said affidavits and give a receipt in full for the taxes hereinbefore mentioned, as well as any privilege tax that had been, or might be demanded, by said State of Mississippi, or to which complainants, or the Louisville, New Orleans & Texas Railway Company was, or might be, subjected, on the part of said railroad operated in said Adams county, Mississippi; that the payment and application of said taxes, the making of said affidavits, the presentation thereof to defendant and his refusal to deliver said tax receipts as required by section 21 of the act incorporating the Mobile & Northwestern Railroad Company, will fully appear by an examination of a true copy of said affidavits made and presented as aforesaid, together with the indorsement of the defendant thereon, the originals
138 whereof are now on file in your honor's court as Exhibits "D," "E," "F" and "G," to bill of complaint in the suit filed by your complainant *vs.* defendant to enjoin the collection of State and county taxes for the years 1891 and 1892 on the property of complainants in said Adams county, Mississippi, and also the certificate of said sheriff and tax collector, that the Mississippi railroad commission of the State of Mississippi, during the month of November, 1892, certified to him, said defendant, that privilege taxes were due for the year 1892, due by the said Louisville, New Orleans & Texas Railway Company, Natchez, Jackson & Columbus division, assessed by said commission as "class 3rd," at the valuation of $10,000 per mile, and on 13.300 miles, the total privilege tax claimed being $133.00, and that in default of payment of said privilege tax, he did, on the 30th day of December, levy on passenger coach No. 11, then on the railroad at complainants' The Yazoo & Mississippi Valley's depot in the city of Natchez, Mississippi, as will more fully appear by reference to copies of said affidavits, indorsements thereon and said certificate of sheriff to be filed herewith as Exhibits "D," "E," "F" and "H," and prayed to be taken as a part of this bill.

That prior to the levy on said car, which said defendant has seized and advertised for sale, to wit: on the — day of December, 1892, the said affidavits were again presented to said defendant as sheriff and tax collector, and a receipt for said privilege taxes so assessed, as shown above, was demanded by complainants, and was refused by defendant, and he has advertised said car for public sale, to enable him to collect said privilege tax, and will proceed to sell it unless restrained by order of this court, to the great damage of and violation of the rights of complainants as hereinbefore set forth.

Complainants further show, that having refused to receive or recognize the affidavits of complainants, showing the payment and application of the taxes of 1891 and 1892 to the debts and liabilities of the Natchez, Jackson & Columbus Railroad Company, incurred and used in the construction of the railroad running from Natchez to Jackson, Mississippi, and to give a receipt in full for said taxes, including said privilege tax, and claiming that the affidavits tend-

ered him are not sufficient in law to warrant him in giving receipts for said taxes including said privilege tax, the said defendant, sheriff and tax collector of Adams county, will, unless restrained by order of this court, proceed, as he has advertised he will do, to sell on the — day of January, 1893, the said car seized by him as aforesaid, to satisfy said demand for privilege tax of $133.00, damages and costs, regardless of the rights of complainants, as hereinbefore set forth.

139 The premises considered, complainants pray that James W. Lambert, sheriff and tax collector of Adams county, Mississippi, be made a party defendant to this bill, and be required to answer all the allegations thereof, and that he be inhibited and enjoined, by order of this court from proceeding to collect said privilege tax of $133.00, assessed by said railroad commission for the year 1892, claimed by him to be due as aforesaid on the property of complainants, derived as aforesaid from the Louisville, New Orleans and Texas Railway Company, or the Natchez, Jackson & Columbus Railroad Company, and from selling the said car levied on as aforesaid, or any other property of roads aforesaid, and that on final hearing he be perpetually enjoined from collecting said privilege tax, or interferring on account thereof with the property of complainants in the said county of Adams, and that he be required by the order of this court to deliver to complainants a receipt as by law required, for the amount of said privilege tax assessed and levied as aforesaid.

May it please your honor to grant the said complainants, the State's writ of subpœna, directed and commanding, etc.

And as in duty bound, complainants will ever pray, etc.

YERGER & PERCY AND
WILL T. MARTIN,
Complainants' Solicitors.

STATE OF MISSISSIPPI, }
Adams County. }

Personally appeared before me, Allison H. Foster, clerk of the chancery court of said county, Will T. Martin, one of the solicitors for complainants in the foregoing bill of complaint, who states on oath, that the matters and things set forth in the foregoing bill as stated therein on the knowledge of complainants or affiant are true, and those stated on the information of others, he verily believes to be true.

WILL. T. MARTIN.

Sworn to and subscribed before me this 7th day of January, A. D. 1893.

[SEAL.] ALLISON H. FOSTER, *Clerk.*

EXHIBITS "D" AND "E."

STATE OF MISSISSIPPI,
County of Adams.

Personally appeared before me, the undersigned Allison H.
140 Foster, clerk of the chancery court of the county aforesaid, A. M. Cooke, president of the Natchez, Jackson & Columbus Railroad Company, with whom I am personally acquainted, and whom I know to be the president of said company, who, being first duly sworn, made oath and deposed as follows:

1. That he is the president of the Natchez, Jackson and Columbus Railroad Company, a corporation existing under the laws of the State of Mississippi.

2. That in the year 1891 the said railroad company applied as much as the sum of $75,000 *dollars* to the payment of the debts and liabilities which said company incurred in the construction of the railroad from Natchez to Jackson, Mississippi, or in payment for money borrowed by said Natchez, Jackson & Columbus Railroad Company, to be used, and which was used, in constructing said railroad and paying debts incurred by said company in constructing same.

3. That the amount of all the taxes upon said railroad for the year 1891, in the county of Adams, State of Mississippi, have actually and in good faith been paid and applied during the year 1891, in the payment of the debts incurred or of the money borrowed as aforesaid; and that the amount of taxes upon said railroad in the county of Adams, State of Mississippi, in and for the year 1891, have actually and in good faith been paid and applied to the payment of the debts incurred, or money borrowed in the construction of said railroad in said county of Adams during the year 1891.

4. That the income and profits derived from said railroad and the use and operation thereof for the year 1891, or for any year since its construction, have not been sufficient to pay any dividend to its stockholders or owners; and that for the year 1891, the profits of said company, or the profits derived from the use and operation of said railroad, have not either or both been sufficient to enable it to declare and pay to the stockholders an annual dividend of eight per cent. on its capital stock, over and above the payment of its debts and liabilities.

A. M. COOKE.

Sworn to and subscribed before me this 5th day of November, A. D. 1892.

[SEAL.]

ALLISON H. FOSTER, *Clerk*,
By WM. A. FOSTER, *D. C.*

STATE OF MISSISSIPPI, }
Adams County. }

TAX COLLECTOR'S OFFICE, NATCHEZ, MISS., *Nov.* 5, 1892.

On advice of counsel, I respectfully decline to give a receipt
141 for the taxes assessed against the L., N. O. & T. R. R., Natchez division, in the county of Adams and State of Mississippi, for the year 1891, said taxes not having been paid, and the within affidavit not being regarded by me as sufficient to warrant me in receiving the same in lieu of the said taxes, or to justify me in giving such receipt.

JAS. W. LAMBERT,
Tax Collector, Adams County.

STATE OF TENNESSEE, }
County of Shelby, } *ss:*

Personally appeared before me, the undersigned H. B. Belt, a commissioner for the State of Mississippi, duly appointed and qualified according to the laws thereof, and resident in Memphis, Tennessee, James M. Edwards with whom I am personally acquainted who, being first duly sworn, made oath and deposed as follows:

1. That he was, prior to the 25th day of October, 1892, vice-president and cashier of the Louisville, New Orleans and Texas Railway Company, a corporation existing under the laws of the State of Mississippi, prior to said date.

2. That on the 28th day of March, 1890, the Natchez, Jackson & Columbus Railroad Company, by deed duly executed and delivered, granted, bargained, sold, assigned, transferred and conveyed to the Louisville, New Orleans and Texas Railway Company as it was by law authorized to do, the railroad theretofore constructed and owned by the Natchez, Jackson & Columbus Railroad Company, from Natchez to Jackson, Mississippi, and also the immunity from taxation then held, enjoyed and possessed by said Natchez, Jackson & Columbus Railroad Company, together with the right to apply the amount of all such taxes as said Natchez, Jackson & Columbus Railroad Company might be subject —, to the payment of the debts and liabilities which were incurred by said Natchez, Jackson & Columbus Railroad Company in the construction of said railroad, or in payment for money borrowed by said Natchez, Jackson & Columbus Railroad Company, to be used, and which was used by said company in constructing said railroad, and in paying debts incurred by said Natchez, Jackson & Columbus Railroad Company in constructing the same; and also, all other property owned at said date by the Natchez, Jackson & Columbus Railroad Company in the county of Adams and State of Mississippi.

3. That the sale, conveyance and transfer of the railroad running from Natchez to Jackson, Mississippi, and, also, the immunity from taxation then held and possessed by the Natchez, Jackson &
142 Columbus Railroad Company, together with the right to apply the amount of all such taxes as said Natchez, Jackson & Columbus Railroad Company was subject to, to the payment of

the debts and liabilities *of* which the Natchez, Jackson & Columbus Railroad Company incurred in the construction of the railroad running from Natchez to Jackson, Mississippi, or in payment for money borrowed by said Natchez, Jackson & Columbus Railroad Company to be used, and which was used, by said company, in constructing said railroad and paying debts incurred by said Natchez, Jackson & Columbus Railroad Company in constructing the same, was made by said Natchez, Jackson & Columbus Railroad Company, to the Louisville, New Orleans & Texas Railway Company, subject to an indebtedness of $1,250,000, which sum was incurred by the Natchez, Jackson & Columbus Railroad Company in the construction of the railroad from Natchez to Jackson, Mississippi, by said company, or in payment for money borrowed by said Natchez, Jackson & Columbus Railroad Company, to be used, and which was used, in constructing said railroad, and paying debts incurred by said company in constructing the same, and which said indebtedness is evidenced by the bonds of the said Natchez, Jackson & Columbus Railroad Company for the said sum of $1,250,000, and which said indebtedness, and said bonds, are still outstanding and unpaid.

4. That in the year 1891, the Louisville, New Orleans and Texas Railway Company applied as much as $75,000 to the payment of the debts and liabilities which the Natchez, Jackson & Columbus Railroad Company incurred in the construction of the railroad from Natchez to Jackson, Mississippi, or in the payment for money borrowed by said Natchez, Jackson & Columbus Railroad Company, to be used, and which was used, by said company in constructing said railroad, and paying debts incurred by said Natchez, Jackson & Columbus Railroad Company in constructing the same.

5. That the amount of all the taxes upon said railroad constructed by the Natchez, Jackson & Columbus Railroad Company from Natchez to Jackson, Mississippi, and, upon the other property sold and conveyed by said company, situated in the county of Adams, State of Mississippi, to the Louisville, New Orleans and Texas Railway Company, for the year 1891, in the county of Adams, State of Mississippi, have actually and in good faith been paid and applied during the year 1891, in the payment of the debts and liabilities incurred in the construction of the railroad from Natchez to Jackson, Mississippi, by the Natchez, Jackson & Columbus Railroad Company; or, in payment for money borrowed by said Natchez,
143 Jackson & Columbus Railroad Company, to be used, and which was used, in constructing said railroad, and paying debts incurred by said company in constructing the same; and that the amount of the taxes upon said railroad and other property, situated in the county aforesaid, conveyed by said Natchez, Jackson & Columbus Railroad Company to the Louisville, New Orleans and Texas Railway Co. as aforesaid, in the county of ——, State of Mississippi, in and for the year 1891, have actually and in good faith been applied to the payment of the debts incurred, or money borrowed and used in the construction of said railroad in said county of Adams, during the year 1891.

6. That the income and profits derived from the said railroad constructed from Natchez to Jackson, Mississippi, by the Natchez, Jackson & Columbus Railroad Company, and by it sold and conveyed to the Louisville, New Orleans & Texas Railway Company, as aforesaid, and the use and operation thereof, for the year 1891, or for any year since its construction, have not been sufficient to pay any dividend to either the stockholders of the Natchez, Jackson & Columbus Railroad Company, the Louisville, New Orleans and Texas Railway Company, or the Yazoo & Mississippi Valley Railroad Company, or the owners of such railroad; and, that for the year 1891, neither the profits of the L., N. O. & T. R. R. Co., nor of the Yazoo and Mississippi Valley Railroad Company, or the profits derived from the use and operation of said railroad from Natchez to Jackson, Mississippi, have either or both been sufficient to enable either of said companies to declare and pay to the stockholders thereof an annual dividend of eight per cent., or any per cent. on the capital stock of said companies, or either of them, over and above the payment of their debts and liabilities.

7. That on the 24th day of October, 1892, the Louisville, New Orleans & Texas Railway Co. was merged into, and was consolidated with the Yazoo & Mississippi Valley Railroad Company, a corporation existing under the laws of the State of Mississippi, and by which the Yazoo & Mississippi Valley Railroad Company became entitled to all the property, rights, privileges, powers and immunities theretofore belonging to the said Louisville, New Orleans & Texas Railway Company.

8. That he is now the third vice-president and cashier of the Yazoo & Mississippi Valley Railroad Company, a corporation existing under the laws of the State of Mississippi.

JAS. M. EDWARDS,
3rd V.-P. and Cashier, Y. & M. V. R. R. Co.

Sworn to and subscribed before me, this 4 day of Nov. 1892, and in testimony whereof, witness my signature and official seal.

[SEAL.] H. B. BELT,
Com. for Miss.

144 THE STATE OF MISSISSIPPI, }
Adams County. }

TAX COLLECTOR'S OFFICE, NATCHEZ, MISS., *Nov.* 5, 1892.

On advice of counsel, I respectfully decline to give a receipt for the taxes assessed against the L., N. O. & T. R. R. Co., Natchez division, in the county of Adams, State of Mississippi, for the year 1891, said taxes not having been paid and the within affidavit not being regarded by me as sufficient to warrant me in receiving the same in lieu of the said taxes, or to justify me in giving such receipt.

JAS. W. LAMBERT,
Tax Collector, Adams County.

STATE OF MISSISSIPPI,
County of Adams.

Personally appeared before me the undersigned Allison H. Foster, clerk of the chancery court of the county aforesaid, A. M. Cooke, president of the Natchez, Jackson & Columbus Railroad Company, with whom I am personally acquainted, and whom I know to be the president of said company, who, being first duly sworn, made oath and deposed, as follows:

1. That he is the president of the Natchez, Jackson & Columbus Railroad Company, a corporation existing under the laws of the State of Mississippi. That in the year 1892, the said railroad company applied as much as the sum of $75,000 to the payment of the debts and liabilities which said company had incurred in the construction of the railroad from Natchez to Jackson, Mississippi, or in payment for money borrowed by said Natchez, Jackson & Columbus Railroad Company to be used, and which was used in constructing said railroad and paying debts incurred by said company in constructing said railroad company in constructing the same.

3. That the amount of all the taxes upon said railroad for the year 1892, in the county of Adams, State of Mississippi, have actual y and in good faith been paid and applied during the year 1892, in the payment of money borrowed, or debts incurred as aforesaid; and that the amount of the taxes upon said railroad in the county of Adams, State of Mississippi, in and for the year —, have actually and in good faith been paid and applied to the payment of the debts incurred or money borrowed in the construction of said railroad in said county of Adams, during the year 1892.

4. That the income and profits derived from the said railroad and the use and operation thereof for the year 1892, or for any year since its construction, have not been sufficient to pay any dividend
145 to its stockholders or owners; and that for the year 1892, the profits of said company, or the profits derived from the use and operation of said railroad have not either, or both, been sufficient to enable it to declare and pay to the stockholders an annual dividend of eight per cent., or any per cent., on its capital stock, over and above the payment of its debts and liabilities.

A. M. COOKE,
Pres't N., J. & C. R. R. Co.

Sworn to and subscribed before me this 5th day of November, A. D. 1892.

[SEAL.] ALLISON H. FOSTER, *Clerk*,
By WM. A. FOSTER, *D. C.*

TAX COLLECTOR'S OFFICE, NATCHEZ, MISS., *Nov.* 5, 1892.

On advice of counsel I respectfully decline to give a receipt for the taxes assessed against the L., N. O. & T. R. R. Co., Natchez, Jackson & Columbus division, in the county of Adams, State of Mississippi, for the year 1892, said taxes not having been paid, and the within affidavit not being regarded by me as sufficient to war-

rant me in receiving the same in lieu of said taxes or to justify me in giving such receipt.

JAS. W. LAMBERT,
Tax Collector, Adams County.

STATE OF TENNESSEE, }
County of Shelby. }

Personally appeared before me, the undersigned H. B. Belt, a commissioner for the State of Mississippi, duly appointed and qualified according to the laws thereof, and resident in Memphis, Tennessee, James M. Edwards, with whom I am personally acquainted, who, being by me first duly sworn, made oath and deposed, as follows:

1. That he was, prior to the 24th day of October, 1892, vice-president and cashier of the Louisville, New Orleans and Texas Railway Company, a corporation existing under the laws of the State of Mississippi prior to said date.

2. That on the 28th day of March, 1890, the Natchez, Jackson & Columbus Railroad Company, by deed duly executed and delivered, granted, bargained and sold, assigned, transferred and conveyed to the Louisville, New Orleans and Texas Railway Company, as it was by law authorized to do, the railroad theretofore constructed and owned by said Natchez, Jackson & Columbus Railroad Company, from Natchez to Jackson, Mississippi, and also the immunity
146 from taxation then held, enjoyed and possessed by said Natchez, Jackson & Columbus Railroad Company, together with the right to apply the amount of all such taxes as said Natchez, Jackson & Columbus Railroad Company might be subject —, to the payment of the debts and liabilities which were incurred by the said Natchez, Jackson & Columbus Railroad Company in the construction of said railroad; or in payment for money borrowed by said Natchez, Jackson & Columbus Railroad Company, to be used, and which was used by said company in constructing said railroad, and in paying debts incurred by the said Natchez, Jackson & Columbus Railroad Company in constructing the same; and also all other property owned at said date by the Natchez, Jackson & Columbus Railroad Company, in the county of Adams and State of Mississippi.

3. That the sale, conveyance and transfer of the railroad running from Natchez to Jackson, Mississippi, and, also, of the immunity from taxation then held and possessed by the Natchez, Jackson & Columbus Railroad Company together with the right to apply the amount of all such taxes as said Natchez, Jackson & Columbus Railroad Company was subject to, to the payment of the debts and liabilities which the Natchez, Jackson & Columbus Railroad Company incurred in the construction of the railroad from Natchez to Jackson, Mississippi, or in payment for money borrowed by said Natchez, Jackson & Columbus Railroad Company, to be used, and which was used by said company in constructing said railroad, and paying debts incurred by said Natchez, Jackson & Columbus Railroad Company in constructing the same, was made by the said

Natchez, Jackson & Columbus Railroad Company to the Louisville, New Orleans & Texas Railway Company subject to an indebtedness of $1,250,000; which said sum was incurred by the Natchez, Jackson & Columbus Railroad Company in the construction of the railroad from Natchez to Jackson, Mississippi, by said company or in payment for money borrowed by said Natchez, Jackson & Columbus Railroad Company, to be used, and which was used, in constructing said railroad, paying debts incurred by said company in constructing the same, and which said indebtedness is evidenced by the bonds of said Natchez, Jackson & Columbus Railroad Company for said sum of $1,250,000, and which said indebtedness and bonds are still outstanding and unpaid.

4. That in the year of 1892 the Louisville, New Orleans and Texas Railway Company applied as much as the sum of $75,000 to the payment of the debts and liabilities which the Natchez, Jackson & Columbus Railroad Company incurred in the construction of its railroad from Natchez to Jackson, Mississippi, or in payment for money borrowed by said Natchez, Jackson & Columbus Rail-
147 road Company to be used and which was used by said company in constructing said railroad, and paying debts incurred by said Natchez, Jackson & Columbus Railroad Company in constructing the same.

5. That the amount of all the taxes upon said railroad constructed by the Natchez, Jackson & Columbus Railroad Company from Natchez to Jackson, Miss., and, upon the other property sold and conveyed by said company, situated in the county of Adams, State of Mississippi, to the Louisville, New Orleans and Texas Railway Company for the year 1892, in the county of Adams, State of Mississippi, have actually and in good faith been paid and applied during the year 1892 in the payment of the debts and liabilities incurred in the construction of the railroad from Natchez to Jackson, Mississippi, by the Natchez, Jackson & Columbus Railroad Company; or, in payment for money borrowed by said Natchez, Jackson & Columbus Railroad Company, to be used, and which was used in constructing said railroad and paying debts incurred by said company in constructing same; and that the amount of the taxes upon said railroad and other property, situated in the county aforesaid, conveyed by the said Natchez, Jackson & Columbus Railroad Company to the Louisville, New Orleans and Texas Railway Company as aforesaid, in the county of ——, State of Mississippi, in and for the year 1892, have actually and in good faith been applied to the payment of the debts incurred, or money borrowed and used in the construction of said railroad in said county of Adams, during the year 1892.

6. That the income and profits derived from said railroad constructed from Natchez to Jackson, Mississippi, by the Natchez, Jackson & Columbus Railroad Company, and by it sold and conveyed to the Louisville, New Orleans and Texas Railway Company, as aforesaid, and the use and operation thereof, for the year 1892, or for any year since its construction, have not been sufficient to pay any dividend to either the stockholders of the Natchez, Jackson

& Columbus Railroad Company, the Louisville, New Orleans and Texas Railway Company, or the Yazoo & Mississippi Valley Railroad Company, or the owners of said railroad; and that for the year 1892, neither the profits of the L, N. O. & T. R. R. Co., nor of the Yazoo & Mississippi Valley Railroad Company or the profits derived from the use and operation of said railroad from Natchez to Jackson, Mississippi, have either both been sufficient to enable either of said companies to declare and pay to the stockholders thereof an annual dividend of 8 per cent. or any per cent., on the capital stock of said companies, or either of them, over and above the payment of their debts and liabilities.

7th. That on the 24th day of October, 1892, the Louisville,
148 New Orleans and Texas Railway Company was merged into and was consolidated with the Yazoo & Mississippi Valley Railroad Company, a corporation existing under the laws of the State of Mississippi, and by which the Yazoo and Mississippi Valley Railroad Company became entitled to all the property, rights, privileges, powers and immunities theretofore and then belonging to the said Louisville, New Orleans & Texas Railway Company.

8th. That he is now the third vice-president and cashier of the Yazoo & Mississippi Valley Railroad Company, a corporation existing under the laws of the State of Mississippi.

JAS. M. EDWARDS,
3rd Vice-President and Cashier Y. & M. V. R. R. Co.

Sworn to and subscribed before me this 4th day of November, 1892, and in testimony whereof witness my signature and official seal.

[SEAL.] H. B. BELT,
Com. for Miss.

And afterwards, on March 6th, 1893, the plea and demurrer of defendant was filed, same being in the words and figures following, to wit:

The said defendant by protestation not confessing, &c., &c., for the plea unto a part of said bill of complaint, viz: unto so much and such parts of said bill, as contain allegations and references to the taxes for the year 1891, on the properties mentioned in said bill, or seeks to bring into question the right of said defendant to collect the same or to raise any issue or issues with regard to said taxes or their legality, and especially as to so much of the prayer of said bill as may seek to restrain or enjoin defendant from proceeding to collect said taxes for the year 1891, pleads and says that on the 29th day of February, A. D. 1892, the said Louisville, New Orleans & Texas Railway Company, grantee of the said Natchez, Jackson & Columbus Railroad Company and subsequently, to wit, on the 25th day of October, 1892, consolidated into the said Yazoo & Mississippi Valley Railroad Company, exhibited its bill of complaint and filed the same in this honorable court against the defendant; setting up in said bill the alleged illegality of the identical same taxes on the same property for the same year 1891 the want of authority in de-

fendant to collect the same, and praying that the collection of said taxes be enjoined; that this defendant filed his demurrer to said bill, and that thereupon such further and other proceedings were had in said cause which was and is numbered No. 1174 on
149 the general docket of this honorable court, that on the 22nd day of October, 1892, a final decree was rendered in this court sustaining said demurrer, dismissing said bill, and dissolving the injunction, and that at the same term of this court, the said complainant in said bill obtained an order allowing it an appeal from said final decree to the supreme court of the State of Mississippi, and that subsequently, to wit, on the 14th day of February, 1893, said cause No. 1174 was removed to the said supreme court and that said cause is now in said supreme court depending; all of which pleadings, proceedings and decree this defendant now here pleads in bar of the said bill of complaint herein so far as the same seeks to bring into question or raise any issue about or seeks relief against said taxes of 1891, and makes this said bill, demurrer and proceedings in said cause No. 1174, a part of this his plea as fully as if the same were incorporated herein, and alleges that in said last cause, No. 1174, all the rights of the parties to the present bill of complaint were fully settled as to said taxes for the year 1891 in this court. And so defendant prays the judgment of this honorable court whether he should be required to make any other or further answer to this present bill of complaint, as to said taxes for the year 1891 or the other matters herein pleaded against.

K. PALMER LANNEAU,
Sol. for Def't.

Sworn to and subscribed before me this 6th day of March, 1892.
ALLISON H. FOSTER, *Clerk.*

And as to all the rest, residue and remainder of the said bill of complaint of the complainants, other than those above answered by plea, the said defendant says he does demur thereto, and for causes of demurrer shows the following:

1. The said complainants have not in and by their said bill of complaint (as to said residue and remainder) made or stated such a case as doth or ought to entitle them to any such relief as is thereby sought and prayed against this defendant.

2. It appears by complainants' own showing, in and by their said bill of complaint, that they are not entitled to the relief prayed against this defendant.

3rd. The allegations of said bill do not show any valid or sufficient reason why said sheriff and tax collector should be restrained or enjoined from proceeding to collect said taxes (of the year 1892) mentioned and sought to be enjoined in said bill of complaint.

4. The allegations of said bill do not show that complain-
150 ants or either of them are entitled to the so-called exemption from taxation alleged to have been granted to the said Natchez, Jackson & Columbus Railroad Company.

5. The said bill of complaint shows no cause or valid reason why

the said defendant sheriff and tax collector aforesaid should have been or should be required or should now be compelled to give to complainants or either of them a receipt for said taxes of 1892 for which receipt is demanded in said bill and the prayer thereof.

K. PALMER LANNEAU,
Solicitor for Defendant.

I hereby certify that I believe the above and foregoing demurrer ought to be sustained.

K. PALMER LANNEAU,
Solicitor for Defendant.

Order Discharging Restraining Order and Refusing Injunction.

In the Circuit Court of the United States, Southern District of Mississippi.

ILLINOIS CENTRAL RAILROAD COMPANY
vs.
WIRT ADAMS, State Revenue Agent, and Yazoo & Mississippi Valley R. R. Co., *et al.* } In Equity. No. 560.

This cause came on to be heard on the motion of the defendants, except the Y. & M. V. R. R. Co., to discharge the restraining order heretofore granted, and to refuse the injunction, and on the motion of complainant to grant an injunction as prayed for in the bill, and both motions were heard together by consent, notice on both sides being waived, and the court, after hearing the pleadings, exhibits and evidence pro and con, and arguments of counsel on both sides, after due consideration, finds that the complainant has shown no right to invoke the jurisdiction of this court, and further being of opinion that this court has no jurisdiction, it is therefore considered, and so ordered, adjudged and decreed, that the motion to discharge said restraining order is sustained, and said restraining order is hereby discharged, and it is further ordered that said motion to grant an injunction is overruled, and the injunction refused. It is further ordered that said motion to grant an
151 injunction is overruled, and the injunction refused. It is further ordered that the clerk of said court enter this order on the minutes of said court.

Ordered, adjudged and decreed in chambers, this Feb. 7th, 1899.

H. C. NILES,
U. S. Judge.

In the Circuit Court of the United States, Sitting at Jackson.

ILLINOIS CENTRAL RAILROAD COMPANY
vs.
WIRT ADAMS, State Revenue Agent, ET ALS. } No. 560.

UNITED STATES OF AMERICA,
Southern District of Mississippi.

To the honorable the judges of the circuit court of the United States for the southern district of Mississippi, sitting at Jackson, in equity:

The above-named complainant, The Illinois Central Railroad Company, conceiving itself aggrieved by the decree made and entered on the — day of February, 1899, in the above-entitled cause, whereby the restraining order in said cause heretofore made was discharged, and whereby the motion of said complainant for a temporary injunction in this cause was refused, does hereby appeal from said order and decree to the United States circuit court of appeals for the fifth circuit, for the reasons specified in the assignment of errors which is filed herewith; and it prays that this appeal may be allowed and that a transcript of the record, proceedings and papers upon which said order was made, duly authenticated, may be sent to the said United States circuit court of appeals for the fifth circuit, and meanwhile, that the appeal bond may be fixed by your honors, and that said order discharging the restraining order in this cause be suspended pending said appeal.

This 8th day of February, 1899.

MAYES & HARRIS,
Solicitors for Complainant.

152 *Assignment of Errors.*

In the Circuit Court of the United States, Sitting at Jackson.

ILLINOIS CENTRAL RAILROAD COMPANY
vs.
WIRT ADAMS, State Revenue Agent, ET ALS. } No. 560.

UNITED STATES OF AMERICA,
Southern District of Mississippi.

Comes the complainant in the above-entitled cause, and for error assigned herein, says that the decree in said cause from which an appeal is prayed, is erroneous and against the just rights of said complainant for the following reasons:

1. Because on the bill and the proofs herein made, the restraining order heretofore granted should not have been discharged.

2. Because on the bill and proofs herein made, the motion for the issuance of a temporary injunction, made by complainant should have been granted, and such temporary injunction should have been ordered to issue.

Wherefore, the said complainant prays that the said decree be reversed, and that the honorable judges of the circuit court may be directed to enter a decree overruling the motion of respondents to discharge said restraining order, and further granting the motion of complainant for the issuance of a temporary injunction in accordance with the prayer of the bill.

MAYES & HARRIS,
Solicitors for Complainant.

Filed Feb. 8th, 1899.

L. B. MOSELEY, *Clerk.*

Order Granting Appeal.

In the Circuit Court of the United States, Sitting at Jackson.

ILLINOIS CENTRAL RAILROAD COMPANY
vs.
WIRT ADAMS, State Revenue Agent, ET ALS. } No. 560.

UNITED STATES OF AMERICA,
Southern District of Mississippi.

The complainant in this cause having prayed an appeal
153 to the circuit court of appeals in and for the fifth circuit, from the decretal order herein rendered, whereby the restraining order heretofore issued is discharged, and the temporary injunction prayed for in the original bill is denied, such appeal is hereby this day allowed, on the execution by complainant herein of an appeal bond, conditioned according to law in the penal sum of twelve hundred dollars, with at least two good sureties, said bond to be approved by the clerk of this court; and on the execution of such bonds, said decretal order shall be superseded, pending said appeal and said restraining order retained accordingly.

Ordered, adjudged and decreed, this the 9th day of February, 1899.

H. C. NILES,
U. S. Judge.

Filed and entered February 9, 1899.

L. B. MOSELEY, *Clerk.*

Appeal Bond.

In the Circuit Court of the United States, Sitting at Jackson.

ILLINOIS CENTRAL RAILROAD COMPANY
vs.
WIRT ADAMS, State Revenue Agent, ET ALS. } No. 560.

UNITED STATES OF AMERICA,
Southern District of Mississippi.

Know all men by these presents: That we, the Illinois Central Railroad Company, as principal and Samuel S. Carter and John

Hart, as sureties, are held and firmly bound unto the defendants, Wirt Adams, State revenue agent, the Railroad Commissioners of the State of Mississippi, J. J. Evans, M. M. Evans and John D. McInnis, Thos. C. Kimbrough and The Yazoo and Mississippi Valley Railroad Company, in the full and just sum of twelve hundred dollars to be paid to the said defendants, their certain attorneys, executors, administrators or assigns; to which payment well and truly to be made we bind ourselves, our heirs, executors, administrators jointly and severally by these presents.

Sealed with our seals and dated this 9th day of February, in the year of our Lord one thousand eight hundred and ninety-nine.

Whereas, lately at a circuit court of the United States for the southern district of Mississippi, in a suit depending in said court between the said Illinois Central Railroad Company, plaintiff,
154 and the said Wirt Adams, State revenue agent, *et als.*, defendants, a decree was rendered against the said Illinois Central Railroad Company and the said Illinois Central Railroad Company having obtained an appeal and filed a copy thereof in the clerk's office of the said court to reverse the decree in the aforesaid suit, and a citation directed to the said defendants citing and admonishing them to be and appear at a session of the United States circuit court of appeals for the fifth circuit, to be holden in the city of New Orleans, Louisiana, in said circuit, on the 18th day of February, 1899:

Now the condition of the above obligation is such, that if the said Illinois Central Railroad Company shall prosecute said appeal with effect and answer all damages and costs if it fail to make the said plea good, then the above obligation to be void; else to remain in full force and effect.

THE ILLINOIS CENTRAL RAILROAD CO.,
By MAYES & HARRIS, *Its Att'ys.*
SAM'L S. CARTER.
JOHN HART.

Filed February 9th, 1899.

Approved:

L. B. MOSELEY, *Clerk.* [SEAL OF THE COURT.]

Citation to U. S. Court of Appeals.

The United States Circuit Court of Appeals for the Fifth Circuit.

No. 560.

THE UNITED STATES OF AMERICA, *Fifth Judicial Circuit,* } ss:

To Wirt Adams, revenue agent of the State of Mississippi, and the Railroad Commission of the State of Mississippi, and J. J. Evans, chairman and member of said commission, and M. M. Evans and John D. McInnis, members of said commission, and Thomas C. Kimbrough, clerk of said commission, and the Yazoo & Mississippi Valley Railroad Company, Greeting:

You are hereby cited and admonished to be and appear at a session of the United States circuit court of appeals for the fifth circuit to be holden at the city of New Orleans, Louisiana, in
155 said circuit, on the 18th day of February, A. D. 1899, pursuant to an appeal filed in the clerk's office of the circuit court of the United States for the southern district of Mississippi wherein The Illinois Central Railroad Company, a corporation and citizen of the State of Illinois, is appellant and you are appellees, to show cause, if any there be, why the decrees rendered against the said appellant, as in the said appeal and assignment of errors herewith filed should not be corrected and why speedy justice should not be done to the parties in that behalf.

Witness the Honorable Melville W. Fuller, Chief Justice of the United States, this 9th day of February, in the year of our Lord one thousand eight hundred and ninety-nine, and of the Independence of the United States of America the one hundred and twenty-third.

[Seal of the Circuit Court of the United States.]

L. B. MOSELEY, *Clerk.*

We acknowledge service of the foregoing writ for all the defendants herein except the Yazoo & Mississippi Valley Railroad Company this the 10th day of February, A. D. 1899.

CRITZ, BECKETT & KIMBROUGH,
Solicitors for Defendants.

We hereby acknowledge service of the writ as within on the Yazoo & Mississippi Valley Railroad Company this the 10th day of February, 1899.

MAYES & HARRIS,
Attorneys for the Y. & M. V. R. R.

156 In the Circuit Court of the United States for the Southern District of Mississippi.

THE ILLINOIS CENTRAL R. R. CO.
v.
WIRT ADAMS, State Revenue Agent of the State of Mississippi, *et als.* } No. 560.

Come all of the defendants herein, by solicitors, and, entering appearance herein specially and only for the purposes of this motion, move the court to dismiss the original bill herein, and for ground assign that the sole object of said original bill was for an injunction, as therein shown, which injunction was by this court refused, and from the decree refusing said injunction an appeal was prayed and granted to the United States circuit court of appeals for the fifth circuit; which appeal was by said court of appeals dismissed for want of jurisdiction, as appears from the copy of the opinion of said court now here shown to the court.

CRITZ, BECKET & KIMBROUGH,
CALHOON & GREEN, *For Motion.*

THE ILLINOIS CENTRAL RAILROAD COMPANY
v.
WIRT ADAMS, State Revenue Agent of the State of Mississippi, Yazoo and Mississippi Valley R. R Co., *et al.* } No. 560.

This day came on to be heard the motion of all the defendants herein, except the Yazoo & Mississippi Valley R. R. Co., to dismiss the original bill herein, and the court having considered the same and it appearing to the court that solicitors for the complainant were present in court on the hearing of said motion, and that
157 they made no objection to the consideration of the same, upon the ground that the mandate from the United States circuit court of appeals for the fifth circuit dismissing said appeal for want of jurisdiction has not been filed in this court, and the court being of opinion that said motion should be sustained, it is ordered, adjudged, and decreed that said motion, be, and the same is hereby, sustained, and that said original bill herein be, and the same is hereby, dismissed, and that defendants go hence without delay, and that complainant be taxed with the costs of this proceeding, for which let execution issue at law; to which said order of dismissal complainant objected.

Ordered, adjudged, and decreed this first day of May, A. D. 1899.

H. C. NILES, *Judge.*

158 Circuit Court of the United States, Southern District of Mississippi, at the May Term, 1899.

ILLINOIS CENTRAL RAILROAD COMPANY
v.
WIRT ADAMS, State Revenue Agent, ET ALS. } No. 560.

Your petitioner, The Illinois Central Railroad Company, respectfully represents that there is manifest error committed, to the injury

of the petitioner, by the final decree pronounced in this cause on the first day of May, 1899, in and by which said final decree this court refused jurisdiction of this cause and dismissed the bill of the complainant finally for want of jurisdiction and pronounced judgment against the complainant for the costs of court.

Wherefore your petitioner, The Illinois Central Railroad Company, considering itself aggrieved, prays an order granting an appeal from said final decree refusing jurisdiction of this cause to the Supreme Court of the United States, as authorized by section 5 of the act of Congress of the United States approved March 3rd, 1891; and petitioner herewith files its bond in the penal sum of five hundred dollars; which bond petitioner prays to be approved by the Honorable Henry C. Niles, one of the judges of this court.

And your petitioner, as in duty bound, will ever pray.

MAYES & HARRIS,
Solicitors for Compl't.

THE ILLINOIS CENTRAL RAILROAD COMPANY
v.
WIRT ADAMS, State Revenue Agent, ET ALS. } No. 560. Assignment of Errors.

159 Comes the appellant, The Illinois Central Railroad Company, in the above-entitled cause and for error assigns as follows, to wit:

The court erred in dismissing the bill filed by the complainant herein for want of jurisdiction to entertain the same.

MAYES & HARRIS,
Solicitors for Appellant.

In the Circuit Court of the United States for the Southern District of Mississippi.

Know all men by these presents that we, The Illinois Central Railroad Company, as principal, and John Hart and Samuel S. Carter, sureties, are held and firmly bound unto Wirt Adams, State revenue agent, of Jackson, Mississippi, the Yazoo & Mississippi Valley Railroad Company, and the Railroad Commission of the State of Mississippi and J. J. Evans and M. M. Evans and John D. McInnis, members of said commission, and Thomas C. Kimbrough in the sum of five hundred dollars, to be paid to the said Wirt Adams, State revenue agent, or his successors in office and to the other obligees named; to which payment, well and truly to be made, we bind ourselves and each of us, jointly and severally, and our and each of our heirs, executors, and administrators, firmly by these presents.

Dated this the 3rd day of May, 1899.

Whereas the above-named Illinois Central Railroad Company has prosecuted an appeal to the Supreme Court of the United States to reverse a judgment rendered in a certain cause wherein the said appellant was complainant and the said Wirt Adams and others

were defendants, numbered 560 on the equity docket of said
160 court of the said circuit court of the United States for the southern district of Mississippi, on the 1st day of May, 1899, in favor of said Wirt Adams, State revenue agent, and others, defendants, against the said appellant:

Now, therefore, the condition of this obligation is such that if the above-named appellant shall prosecute its said appeal to effect and answer all costs and damages *or* if it shall fail good to make its plea, then this obligation shall be void; otherwise to remain in full force and virtue.

THE ILLINOIS CENTRAL
RAILROAD COMPANY,
By EDWARD MAYES, *Attorney.*
JOHN HART.
SAMUEL S. CARTER.

Approved May 3, 1899.
H. C. NILES, *Judge.*

ILLINOIS CENTRAL RAILROAD COMPANY
v.
WIRT ADAMS, State Revenue Agent, ET ALS. } No. 560.

Upon consideration of the petition for appeal to the Supreme Court of the United States filed herein by the Illinois Central Railroad Company, it is ordered that said appeal be granted, the bond therefor in the penalty of five hundred dollars having been executed, and, being approved by the court, this appeal is granted solely upon the question of jurisdiction, this court having refused to assume jurisdiction in this cause. Unless counsel shall agree by stipulation filed with the clerk of this court in respect to the portions of the record to be transcribed and filed in the said United States Supreme Court under said appeal as prayed and granted, the appellant has leave to present the record to the court on Satur-
161 day, the 6th day of May, 1899, for the determination of what portion of the record shall be certified to said Supreme Court of the United States.

H. C. NILES, *Judge.*

UNITED STATES OF AMEICA, *ss:*

To Wirt Adams, State revenue agent, and to the Railroad Commission of the State of Mississippi, and J. J. Evans and M. M. Evans and John D. McInnis, members of said commission, and Thomas C. Kimbrough, clerk, and the Yazoo & Mississippi Valley Railroad Company, Greeting:

You are hereby cited and admonished to be and appear at a Supreme Court of the United States, at Washington, within thirty days from the date hereof, pursuant to an appeal in equity cause numbered 560, taken and allowed from the circuit court of the United States in and for the southern district of Mississippi, at Jackson, to the Supreme Court of the United States, at Washington,

in the District of Columbia, wherein The Illinois Central Railroad Company is the appellant and you are the appellees, to show cause, if any there be, why the judgment rendered against the said appellant, as in its petition for appeal is mentioned, should not be corrected and why speedy justice should not be done to the parties in that behalf.

Witness the Honorable Henry C. Niles, one of the judges of the said circuit court of the United States, this the 3rd day of May, A. D. one thousand eight hundred and ninety-nine.

H. C. NILES,
District Judge of the United States in and for the Southern District of Mississippi.

162 ILLINOIS CENTRAL RAILROAD COMPANY, Appellant,
v.
WIRT ADAMS, State Revenue Agent, ET ALS., Appellees. } No. 560.

In the above-entitled cause, on the appeal of the Illinois Central Railroad Company to the Supreme Court of the United States, we do hereby waive issuance and service of citation as to all of the appellees except The Yazoo & Mississippi Valley Railroad Company, and agree to enter and do hereby enter appearance for them in the said Supreme Court, but said appearance may be either general or on a motion to dismiss.

R. C. BECKET,
Counsel of Record.

We do hereby waive service of the foregoing citation this May 17th, 1899.

THE YAZOO & MISSISSIPPI VALLEY R. R. CO.,
By EDWARD MAYES, *Att'y.*

163 UNITED STATES OF AMERICA,
Southern District of Mississippi.

In the Circuit Court of the United States, at Jackson.

ILLINOIS CENTRAL RAILROAD COMPANY
v.
WIRT ADAMS, State Revenue Agent, ET ALS. } No. 560.

I, Henry C. Niles, judge, presiding over said court at the May term, 1899, do hereby certify that in the course of the proceedings in said cause before me the following questions arose pertinent to the jurisdiction of said court in said cause and were in issue between the parties litigant and were discussed by counsel and considered by the court:

In the original bill filed herein the complainant alleged that it is a corporation duly organized and existing under the laws of the State of Illinois and has no corporate existence, residence, or citi-

zenship under the laws of nor in the said State of Mississippi; that it was a tax-payer of the State of Mississippi and of the district aforesaid.

It further alleged that all of the defendants to the bill were citizens and residents of the State of Mississippi and of this judicial circuit and of the said district, and that The Yazoo & Mississippi Valley Railroad Company, one of the defendants thereto, is a corporation existing alone under the laws of the said State of Mississippi and doing business in said State and in said district.

The said bill further alleged that the Natchez & Jackson Railroad Company was incorporated by the said State of Mississippi in the year 1870 for the purpose of building a railroad within the State of Mississippi, and that by its charter of incorporation, which was set forth in said bill, it was provided that all taxes to which the
164 said company should be subjected for a period of thirty years from the date of its said charter were appropriated and set apart and should be applied to the payment of the construction liabilities of said railroad, and that it was made the duty of the tax collectors of the various *tax collectors of the various* counties in which said railroad should be liable to pay taxes, on the presentation in each successive year of an affidavit made by the president or cashier of such company that during the said year the said company had made payments on account of its construction debt to an amount equal to the taxes assessed, to deliver to the said company receipts for said taxes so assessed in full, which receipt so delivered should be a full acquittance and discharge of all taxes, State, county, and municipal, to which said company and its property should be subject.

The said bill further set forth that in the year 1890 the legislature of the State of Mississippi authorized the said railroad company to sell all of its railroad property situated in this State to the Louisville, New Orleans & Texas Railway Company, together with all franchises, rights, powers, privileges, and immunities, unto said railroad company appertaining and belonging.

The bill further alleged that the said sale was accordingly made by a deed of conveyance executed in the month of March, 1890, whereby the said Louisville, New Orleans & Texas Railway Company became vested with said property and with the said rights, privileges, and immunities set forth.

The said bill further alleged that on the 24th day of October, 1892, the said Louisville, New Orleans & Texas Railway Company and the defendant The Yazoo & Mississippi Valley Railroad Company, by virtue of powers conferred upon them by their respective charters, consolidated with each other, and that by such consolidation the said Louisville, New Orleans & Texas Railway Com-
165 pany was merged in the said Yazoo & Mississippi Valley Railroad Company and its existence terminated, while the existence of the said last-named company continued unimpaired and unbroken, and that by virtue of such consolidation the said property that had been property of the Natchez, Jackson & Columbus Railroad Company became the property of the said Yazoo &

Mississippi Valley Railroad Company, with all the rights, privileges, and immunities appertaining thereto, as hereinbefore stated.

The said bill further averred and set forth that the supreme court of the State of Mississippi by a certain decision in the case of Mississippi Mills *v.* Cook, decided in 1878, had decided and held that the legislature of the State of Mississippi had the power under its then existing constitution to enact laws exempting property from taxation, and set forth the fact that said decision had been continuously followed in numerous designated cases by the said supreme court ever since that date.

The said bill further averred that in the case of The Railroad Company *v.* Lambert, decided by the supreme court of Mississippi in the year 1893, it had been held and determined that the said sale of 1890 did operate to transfer the said property of the Natchez & Jackson railroad to the Louisville, New Orleans & Texas Railway Company, with the said rights, privileges, and immunities hereinbefore mentioned appertaining to the same, and also had decided that the said consolidation of Oct. 24, 1892, had transferred said property, along with said rights, privileges, and immunities, to the said Yazoo & Mississippi Valley Railroad Company, and also that the said consolidation did operate by way of a merger, and did not create a new company, and also decided that section 180 of the constitution of the State of Mississippi, enacted in 1890, did not in any way affect the rights of said companies under said consolidation.

The said bill also alleged that on the 20th day of June,
166 1898, the supreme court of the State of Mississippi, in a certain litigation which had arisen subsequently to the decision of the Lambert case aforesaid, had overruled the said Lambert case and announced a new law for the said State, to wit, that under the constitution of 1869 the legislature of the State of Mississippi had no power to grant exemptions from taxation in charters of railroads, and had also decided that the said consolidation of 1892 did create a new company, which became subject to the operation of section 180 of the constitution of 1890, whereby the contract right held under the charter of the Natchez & Jackson railroad as aforesaid was lost and extinguished.

The bill further alleged that said contract right so embodied in and conferred by the charter of the said Natchez & Jackson Railroad Company was not a contract of exemption, but was exactly what it professed to be—a contract of appropriation, to endure for thirty years, which was secured and guaranteed by the provisions of the Constitution of the United States, section 10, article I.

The bill further alleged that in the year 1898 the railroad commission of the State of Mississippi, who are by law made assessors of railway property for taxation and who are the defendants to said bill, and Wirt Adams, State revenue agent of the State of Mississippi, also made defendant, inaugurated a proceeding under the statutes of the State of Mississippi passed in the year 1892 and in the year 1894 and under the said constitution of the State of Mississippi, section 180, adopted Nov. 1, 1890, to assess taxes against the property of the said Natchez & Jackson railroad, then being

property, as aforesaid, of the Yazoo & Mississippi Valley Railroad Company, to collect the same by process of law and by seizures under distress warrants and by suit thereupon brought by the said State revenue agent, and that such assessments had been made, amounting to about $60,000, and that such assessments and
167 such seizures and suits would cause cloud upon the title to said railway property and would cause multiplicity of suits, and that there was no adequate remedy at law for the injuries to be suffered therefrom.

The bill further alleged that the complainant, The Illinois Central Railroad Company, held bonds of the said Louisville, New Orleans & Texas Railway Company for large amounts which were secured by mortgages upon the property of the said Louisville, New Orleans & Texas Railway Company, including the said Natchez, Jackson railroad, and upon the profits thereof, and that said bonds had been acquired by the said complainant in the year 1892 upon the faith of the said contract hereinbefore set forth, and of the then existing decisions of the supreme court of the State of Mississippi, and that the collection of said taxes would impair the obligation of the contract of the said complainant and cast clouds upon the title of the property by which its said bonds were secured.

The said bill also set forth in considerable detail various contracts, the obligation of which would be impaired, as explained in said bill, by the collection of said taxes.

The bill alleged further that the proceeding by the said State revenue agent and the said railroad commission complained of in said bill was an attempt to enforce against the said charter rights of the said Natchez & Jackson Railroad Company as to said railroad then held and enjoyed by the Yazoo & Mississippi Valley Railroad Company, as hereinbefore set forth, and inuring to the bondholders of the said Louisville, New Orleans & Texas Railway Company, as hereinbefore described, subsequent legislation of the State of Mississippi, to wit, the said statutes of 1892 and 1894 and the said section 180 of the constitution of 1890, and to impair the obligation of the contracts in said bill set forth by the said enforcement of said subsequent legislation and said subsequent
168 provision in said constitution, all in violation of section 10, article I, of the Constitution of the United States.

And also said bill alleged that the attempt of the said railroad commission and the said revenue agent was to fasten upon the said railroad a *a* paramount lien under the subsequently enacted statutes of said State, which would displace the existing liens and mortgages upon said railroad and constitute a paramount lien thereupon as for unpaid taxes, and their proceedings to seize and sell the said railroad thereunder constitute an effort to deprive the complainant of its property and its mortgage lien, which secured the bonds belonging to the complainant, without due process of law, in violation of the fourteenth amendment of the Constitution of the United States.

Upon said bill of complaint, the undersigned, Henry C. Niles, judge, etc., did on the 4th day of August, 1898, order the issuance

of a restraining order, which issued accordingly, and on the 17th day of January, 1899, the defendants, the State revenue agent and the railroad commission and their clerk, moved the court to discharge the said restraining order on the ground, amongst others, that the court had no jurisdiction to issue the same or to entertain the cause.

And at the same time the said complainant moved the court to issue a temporary injunction as prayed in the bill.

Whereupon, on the 8th day of February, 1899, the undersigned as judge aforesaid, in vacation, made a decretal order discharging said restraining order and refused to grant a temporary injunction prayed for.

On the first day of May, 1899, being the first day of the May term, 1899, of the said circuit court, the said cause was finally dismissed by order of the court on the motion of said defendants, Wirt Adams, State revenue agent, and the said railroad commission and
169 their said clerk; to which dismissal the complainant excepted.

Now, therefore, it is certified that the question of the jurisdiction of this court was in issue in said cause upon the grounds hereinbefore stated, namely:

1. That the complainant in its original bill showed no jurisdiction on the ground of diversity of citizenship. Defendants claim that complainant's interest was derivative through the Yazoo & Mississippi Valley Railroad Company, and that the complainant had no right to raise jurisdiction in the Federal courts by making the Yazoo & Mississippi Valley Railroad Company a party defendant in the cause.

2. That the complainant by its original bill showed no jurisdiction in this court because of the subject-matter stated, inasmuch as the bill set forth no proper Federal question.

3. That there was no jurisdiction in this matter because the bill was a suit against the State of Mississippi and in violation of the eleventh amendment to the Constitution of the United States.

The court having dismissed the bill on the ground of want of jurisdiction, the foregoing three questions, arising upon the pleadings, the process, and the evidence, are hereby certified to the Supreme Court of the United States for its decision in conformity with the fifth section of the act of Congress of the year 1891.

Certified to by me this the 16th day of May, 1899, being a day of the current May term, 1899, of the said circuit court of the United States.

H. C. NILES, *Judge.*

170 UNITED STATES OF AMERICA,
Southern District of Mississippi.

In the Circuit Court of the United States, at the May Term, 1899.

ILLINOIS CENTRAL RAILROAD COMPANY
v.
WIRT ADAMS, State Revenue Agent, ET ALS. } No. 560.

In this cause the parties not having filed in this court a written agreement in respect to the parts of the record to be certified to the Supreme Court of the United States, as provided for in the decree of this court dated May 3rd, 1899, it is therefore considered by the court that the portions of the record necessary to be certified to the Supreme Court in order to present properly the questions of jurisdiction certified to said court are as follows:

1. The caption of the minutes of this court.
2. Bill of complaint.
3. Order for temporary injunction.
4. Exhibit "A" to bill of complaint.
5. Exhibit "B" to bill of complaint.
6. Exhibit "C" to bill of complaint.
7. Exhibit "D" to bill of complaint.
8. Exhibit "E" to bill of complaint.
9. Exhibit "F" to bill of complaint.
10. Exhibit "G" to bill of complaint.
11. Injunction bond.
12. Temporary injunction.
13. Motion to discharge temporary order.
14. Motion for temporary injunction.
15. Agreement as to transcript and other matters.
16. Notice of revenue agent to railroad commission.

171 17. Notice of revenue agent to railroad commission.

18. Citation from railroad commission to railroad.
19. Answer of the Yazoo & Mississippi Valley R. R. Co. to railroad commission.
20. Objection of Yazoo & Mississippi Valley R. R. Co. to proposed amendment.
21. Order of railroad commission as to assessment.
22. Order requiring railroad Co. to furnish schedules.
23. Certificate of secretary of R. R. commission as to assessments.
24. Copy of act to incorporate Mississippi Valley Company.
25. Copy of bill of complaint of The Mississippi Mills *v.* Cook, sheriff of Copiah county.
26. Copy of record from chancery court of Adams county in case of The Natchez, Jackson & Columbus R. R. Co. *et als. v.* James W. Lambert, sheriff & tax collector of Adams county.

26. Order dissolving temporary restraining order and refusing injunction.

27. Petition for appeal to U. S. circuit court of appeals.
28. Assignment of errors.
29. Order allowing appeal to circuit court of appeals.

30. Appeal bond on appeal to circuit court of appeals.
31. Citation on appeal to circuit court of appeals.
32. Motion to dismiss bill.
33. Order dismissing bill.
34. Petition for appeal to supreme court.
35. Assignment of errors.
36. Appeal bond.
37. Order granting appeal.
38. Citation.

172 39. Agreement waiving service of citation.
40. Certificate as to question of jurisdiction.
41. This order stating parts of record to be certified.

Ordered accordingly this the 16th day of May, 1899, being a day of the regular May term, 1899, of the May term, 1899, of this court.

H. C. NILES, *Judge.*

[Endorsed:] 560. Illinois Central R. R. Co. *v.* Wirt Adams, State revenue agent, *et als.* Order as to record. E. 7–240. Filed & ent. May 16, '99. L. B. Moseley, cl'k.

173 *Clerk's Certificate.*

UNITED STATES OF AMERICA,
Southern District of Mississippi.

I, L. B. Moseley, clerk of the circuit court of the United States for the southern district of Mississippi, for the fifth circuit, sitting at Jackson, do hereby certify that the foregoing writing-, constituting one hundred & seventy-two (172) pages, annexed to this certificate, are full and true and correct copies of the originals in the case of The Illinois Central Railroad Company *v.* Wirt Adams, State revenue agent, *et als.*, as the same appear on file and are of record in my office, and that they do constitute a true and perfect copy of the record in cause number 560 on the equity docket in said court and of the assignment of errors and of all proceedings therein.

Seal U. S. Circuit Court, 5th Circuit, Southern District of Mississippi.

In witness whereof I have hereunto set my hand and the seal of this court this the seventeenth day of May, in the year of our Lord one thousand eight hundred and ninety-nine, and of the Independence of the United States one hundred and twenty-three.

L. B. MOSELEY, *Clerk.*

Endorsed on cover: File No., 17,433. S. Mississippi C. C. U. S. Term No., 319. The Illinois Central Railroad Company, appellant, *vs.* Wirt Adams, State revenue agent, and The Railroad Commission of the State of Mississippi *et al.* Filed June 2nd, 1899.